Supreme Court, U.S.
FILED

(1)

CASE NO. 95 • 542 SEP 27 1995

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

RICHARD EDWARD LEON, SR.

Petitioner,

versus

THE SUPREME COURT OF FLORIDA and
THE FLORIDA BOARD OF BAR EXAMINERS

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO
THE SUPREME COURT OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

DOES THE FOURTEENTH AMENDMENT PROHIBIT A STATE FROM REJECTING ON TENUOUS GROUNDS AN APPLICATION TO PRACTICE LAW FOR MORAL DISQUALIFICATION WHERE THE EVIDENCE SHOWS THE APPLICANT IS MORALLY QUALIFIED UNDER THE RULES OF ADMISSION.

PARTIES

The Petitioner is:

Richard Edward Leon, Sr.

The Respondents are:

The Supreme Court of Florida

The Florida Board of Bar Examiners

TABLE OF CONTENTS

Page

QUESTION PRESENTED FOR REVIEW i

PARTIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

REFERENCE TO REPORTS OF OPINIONS BELOW vi

JURISDICTION vii

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED viii

STATEMENT OF THE CASE 1

ARGUMENT 9

CONCLUSION 18

In this Petition, the Florida Board of Bar Examiners will be referred to as the "Board" and the Applicant as "Petitioner."

TABLE OF AUTHORITIES

Page

Constitutional Provisions

First Amendment ..... vii-viii, 14

Fourteenth Amendment ..... i, vii, 8
..... 9

Federal Cases

United States Supreme Court

Baird v. Arizona, 401 US 1 (1971) 7, 9

Ex parte Garland, 71 US 366 (1867) 7, 9

Konigsberg v. State Bar of California,
353 US 252 (1957) 15-16

Schware v Board of Bar Examiners, cited in
Baird v. Arizona, 401 US 1 (1971) 7, 9

Staub v. Baxley, 355 US 313 (1958) ..... vii, 8

Washington ex rel Oregon R. & N. Co.
v. Fairchild, 224 US 510 (1912) 7, 9, 14

State Cases

The Florida Bar v. Smith,
650 So.2d 980 (Fla. 1995) 8

U.S. Code

28 United States Code §1257 vii

Other Resources

Rules of the Supreme Court of Florida
(relating to admission to the Bar),
Article III, B, Section 3 f 13, 14

REFERENCE TO OFFICIAL REPORTS OF OPINIONS BELOW

There are no present official reports of the Findings of Fact and Conclusions of Law of The Florida Bard of Bar Examiners or of the orders of The Supreme Court of Florida denying review and denying rehearing as they are considered confidential. All of the above are on file in The Supreme Court of Florida under case style and number as follows:

IN THE SUPREME COURT OF FLORIDA

FLORIDA BOARD OF BAR EXAMINERS

RE: R.E.L. Case No. 84,786

JURISDICTION

The judgment for which review is sought was entered on May 12, 1995 (A 2). Petitioner filed a timely Motion for Rehearing (A 81) which was denied on 29 June 1995 (A 25).

The judgment for which review is sought is a final judgment of the highest court of the State of Florida where review could be sought and where the judgment turns upon substantial federal questions. Jurisdiction of the United States Supreme Court to review such cases is pursuant to 28 United States Code §1257.

There are no adequate state grounds for the denial of review of the Board's recommendation against admission to the practice of law in Florida as will be further addressed in the argument under the principles established in *Staub v. Baxley*, 355 U.S. 313 (1958). Petitioner's due process and equal protection rights were violated.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

FEDERAL CONSTITUTIONAL PROVISIONS

FOURTEENTH AMENDMENT

Section 1

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the

right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The following cited Rules are set out verbatim in the Appendix:

RULES OF THE SUPREME COURT OF FLORIDA RELATING TO ADMISSIONS TO THE BAR, Article III B.,

Section 2.a., 2.b., 2.c. (A 196-199);

Section 3.a., 3.b. (A 200-202), 3.d., 3.e., 3.f. (A 202-205);

Section 4.a., 4.b., and 4.e. (A 206-209).

STATEMENT OF THE CASE

The Petitioner was admitted to practice law in Florida in June of 1966 (A 5) and became a circuit judge in Hillsborough County, Florida (A 12). In 1983 Petitioner was charged with judicial misconduct by the Florida Judicial Qualifications Commission and, upon that body's recommendation, was removed from office by the Supreme Court of Florida (A 12).

Petitioner was indicted on July 13, 1983, on two counts of perjury, one count of official misconduct, one count of bribery, and one count of unlawful compensation (A 8). Petitioner was found guilty of the two perjury counts and the count on official misconduct (A 8, 13). The official misconduct count was reversed on appeal (A 8). Based upon the felony convictions and judicial misconduct he was disbarred from the practice of law by the Supreme Court of Florida on the 11th of June 1987 (A 5, 14). After the felony convictions Petitioner was placed on probation, fined $5,000.00, and ordered to perform one thousand hours of community service (A 8).

After completing his community service, Petitioner obtained a Doctorate in Medicine in the Dominican Republic (A 5) and in

1992 received a full Florida pardon for the convictions (A 193-195).

He applied for readmission to The Florida Bar and successfully completed the examination in November of 1992 (A 5-6).

The Board served specifications concerning Applicant's character and fitness including four "charges" as follows:

Specification 1

> That while serving as a Florida circuit court judge and as a member of The Florida Bar, you were investigated by the Judicial Qualifications Commission relative to your engaging in ex parte communications with Chief Circuit Court Judge Arden Mays Merckle in relation to the criminal case of Alisa D. Avery. That the Judicial Qualifications Commission filed a notice of Formal Charges in five counts against you on April 20, 1983. That a six count Amended Notice of Formal Charges was filed against you on May 13, 1983. That you were subsequently adjudicated guilty by the Commission on four of the counts the circumstances of which are clearly set forth in the Commission's Findings of Fact, Conclusions of Law and Recommendations attached here as Exhibit "A". The Supreme Court of Florida subsequently upheld the Commission's Findings and ordered your removal from judicial office.

Specification 2

> That you were indicted on July 13, 1983 by a Hillsborough County grand jury on two counts of perjury, one count of official misconduct, one count of bribery and one count of unlawful compensation. That a copy of the Indictment is

attached hereto as Exhibit "B." That you were subsequently tried by a jury and found guilty on December 14, 1993 on the perjury counts and one count of official misconduct. That the appellate court later set aside your conviction on the count of official misconduct and vacated the sentence as the underlying statute had been held unconstitutionally vague. That you were sentenced to serve five years probation, fined $5,000.00 in court costs and ordered to perform 1,000 hours of community service with HRS. That a copy of the Judgment and Probation Order is Exhibit "C."

Specification 3

That you were admitted to The Florida Bar in 1966. That by order of the Supreme Court of Florida issued on June 11, 1987, you were disbarred from the practice of law based upon your felony convictions and related removal from judicial office. That a copy of the Court's disbarment order is attached as Exhibit "D."

Specification 4

That you continue with a pattern of dishonesty as demonstrated by:

(A) You continue to deny the facts surrounding the alteration of Alisa D. Avery's criminal sentence which ultimately resulted in your conviction on two counts of perjury. Specifically, you relayed to the Board during the application process and during the investigative hearing that your observance of Ms. Avery being fingerprinted prompted your ex parte conversation with Judge Merckle.

That these statements to the Board are false or lacking in candor in that the JQC and the Grand Jury found your conversation with Ms. Avery's

father led to your conferring with Judge Merckle, rather than your viewing her in the fingerprinting process.

That said response that on the day of Alisa Avery's sentencing you saw her being fingerprinted from your office and that was the reason for your going to the office of Judge Merckle was false, misleading or lacking in candor. That you went to Judge Merckle's office, in truth and in fact, after conferring with Alisa Avery's father, Arthur Avery, Sr.

(B) That you appeared before the division of the Board on June 18, 1983 at which time you were questioned on matters material to the Board's investigation into your character and fitness for admission to The Florida Bar. That at said hearing you gave the following testimony under oath in response to the following questions:

Q. Are you guilty of perjury?

A. I did not commit perjury. I did not commit perjury. I have had a very, very law-abiding life. I've raised my family as a law-abiding citizen. I was guilty of lying to the investigator for the JQC. I admit that and that was a colossal mistake and I'm not guilty of perjury.

Q. Were you under oath when you testified before the JQC?

A. Yes, sir.

Q. I'm not an attorney. Would you describe to me, please, what is perjury?

A. Perjury is being under oath and giving a false statement.

Q. Well, you told us that you lied to the JQC--

A. Yes, sir.

Q. -- under oath.

A. No, sir.

Q. That's what you told us before, "I lied to the JQC."

A. Yes, sir, investigator, but that's not under oath, sir.

Q. Subsequently under oath you didn't lie to the JQC?

A. I was convicted of lying to the JQC. Your question was did I commit perjury and I did not commit perjury.

That said testimony that you did not commit perjury was false, misleading and lacking in candor in that you were convicted of perjury for having lied to the JQC.

(C) Additionally, that at said investigative hearing you testified that you recanted your false statements to the JQC's investigator before Judge Merckle did. That said testimony was false, misleading or lacking in condor because you did not recant until after discovering Judge Merckle was recanting.

(D) Further, that you told an investigator from the Florida Parole Commission and the Office of Executive Clemency on or about April, 1992 that you were pursuing medical licensure and not a career in law. That said statements were false, misleading or lacking in candor in that you

> are currently seeking admission to the bar in order to practice and have not pursued medical licensure since July, 1991.
>
> (A 7-11)

Specifications 1, 2, and 3 were basically admitted by the Applicant and Specification 4 was denied (A 256-260).

A formal hearing was held on the 15th day of July, 1994 before the Board (A 7). At the hearing, the Petitioner presented witnesses (A 84-192) and affidavits (A 210-255) attesting to his rehabilitation and present good moral character. The Board's only witness testified favorably to the Petitioner (A 183-192).

After the hearing, the Board issued its Findings of Fact and Conclusions of Law recommending that Petitioner not be admitted to The Florida Bar (A 4-21) after which Petitioner sought review before the Supreme Court of Florida (A 25-57) which was denied without opinion on May 12, 1995 (A 2).

Petitioner filed a motion for rehearing (A 78-83) which was denied on June 29, 1995 (A 23). This Petition followed.

Where and How the Federal Questions Were Raised

The due process and equal protection questions under the

Fourteenth Amendment were first raised in the Petitioner's motion for rehearing in the Supreme Court of Florida (A 78-82). This was done by case cite as follows:

> In *Baird v. Arizona*, 401 U.S. 1, 27 L.Ed 2d 639, 91 S.Ct. 702 (1971), the United States Supreme Court announced, as a general proposition, that:
>
> > The practice of law is not a matter of grace, but of right for one who is qualified by his learning and his moral character. See *Schware v Board of Bar Examiners, supra*, and *Ex parte Garland*, 4 Wall 333, 18 L.Ed 366 (1867). [A 78]

Then by attacking the procedures of the Board thusly:

> To merely hear and not apply proofs validly before it, resulted in a denial of due process by The Board. The United States Supreme Court in *Washington ex rel Oregon R. & N. Co. v. Fairchild*, 224 U.S. 510, 56 L.Ed. 863, 32 S.Ct. 535 (1912), set out the requirements of a fair tribunal. This case involved a ruling of a state railroad commission resulting from an asserted hearing held in violation of due process.
>
> The Court, in reversing, stated:
>
> > The carrier must have the right to secure and present evidence material to the issue under investigation. It must be given the opportunity by proof and argument to controvert the claim asserted against it <u>before a tribunal bound not only to listen, but to give legal effect to what has been established</u>.
>
> (Emphasis supplied.)

This principle was violated by The Board.

(A 80)

Finally, quoting from *Staub v. Baxley*, 355 U.S. 313 (1958) for the proposition that the judicially affirmed actions of the Board did not rest on tenable non-federal grounds:

> "It therefore is within our province to inquire not only whether the right was denied in express terms, but also whether it was denied in substance and effect, as by putting forward non-federal grounds of decision that were without any fair or substantial support. . . [for] if non-federal grounds, plainly untenable, may be thus put forward successfully, our power to review easily may be avoided."
>
> (Emphasis supplied.)
>
> The Board's reasoning and foundation for its conclusion is untenable.
>
> (A 81-82)

On that same page, Petitioner noted that the Board was punishing Petitioner for fully pardoned past misdeeds in violation of the Fourteenth Amendment (A 82) and that U.S. Representative Larry Smith was only suspended from the practice of law for three years for conduct similar to that of Petitioner (citing *The Florida Bar v. Smith*, 650 So.2d 980 (Fla. 1995)). (A 82-83).

ARGUMENT

DOES THE FOURTEENTH AMENDMENT PROHIBIT A STATE FROM REJECTING ON TENUOUS GROUNDS AN APPLICATION TO PRACTICE LAW FOR MORAL DISQUALIFICATION WHERE THE EVIDENCE SHOWS THE APPLICANT IS MORALLY QUALIFIED UNDER THE RULES OF ADMISSION.

In *Baird v. Arizona*, 401 U.S. 1 (1971), this Court announced, as a general proposition, that:

> The practice of law is not a matter of grace, but of right for one who is qualified by his learning and his moral character. See *Schware v Board of Bar Examiners, supra*, and *Ex parte Garland*, 4 Wall 333, 18 L.Ed 366 (1867).

It is apparent that The Board lapsed into a subjectively based reasoning process which ignored the clear and convincing evidence of rehabilitation and moral fitness which, under a proper constitutionally objective analysis, could only have resulted in a favorable recommendation.

The Board merely heard but did not apply proofs validly before it. This resulted in a denial of due process by The Board. The United States Supreme Court in *Washington ex rel Oregon R. & N. Co. v. Fairchild*, 224 U.S. 510 (1912), set out the require-

ments of a fair tribunal. That case involved a ruling of a state railroad commission which was asserted to have ignored the evidence before it.

This Court, in reversing, stated:

> The carrier must have the right to secure and present evidence material to the issue under investigation. It must be given the opportunity by proof and argument to controvert the claim asserted against it before a tribunal bound not only to listen, but to give legal effect to what has been established.
>
> (Emphasis supplied.)

This principle was violated by The Board.

The Board's only witness was Felix Ruiz, the Parole Examiner who investigated the Applicant in relation to his request for a pardon. He had investigated the Petitioner concerning his application for the pardon of his convictions (A 183-192). He did not uncover anything bad or derogatory (A 190).

At the formal hearing, Petitioner submitted numerous affidavits (A 210-255) all attesting to his moral character and fitness to practice law, including one from now deceased James C. Atkins, former Justice of the Supreme Court of Florida (A 254-255).

At the hearing, Petitioner presented numerous witnesses a cross-section of which are in the Appendix as follows:

1. Frank D. Alvarez, Circuit Judge and Chief Judge of the Thirteenth Judicial Circuit (A 84-107);

2. Bob Anderson Mitcham, Circuit Judge (A 108-126);

3. James A. Arnold, Circuit Judge (A 127-133)

4. Sam Pendino, Circuit Judge (A 134-145);

5. Carl Neill (A 146-156);

6. Fred L. Buckine (A 157-174);

7. Henry O. Wilson (A 175-182);

All attested to the Petitioner's good moral character.

The only evidence against the Petitioner was:

1. The convictions (A 8), now fully pardoned (A 193-195);

2. Disbarment from the practice of law (A 8); and

3. Removal from judicial office (A 7-8).

The Board, in finding Petitioner failed to establish rehabilitation (A 18), established a policy which resulted in an impossible burden on any applicant convicted of perjury to establish rehabilitation. The Board found the evidence on Specification 4 insufficient and found it not proven (A 14-15) but found Specification 1, 2, and

3 proven and that any one would be adequate reason to recommend against admission (A 13-14). Yet, the overwhelming evidence is that the Petitioner accepted his conviction without malice (A 84-175).

The Board alluded to Petitioner's lack of community service and positive actions indicating a useful and constructive place in society (A 17) and concluded that:

> Instead, the applicant has merely shown that he is now living as and doing those things he should have done throughout life, such as complying with the terms of his sentence, working and supporting his family.

Here the Board's bias surfaces; the Petitioner testified he voluntarily contributed free medical service to the poor over a four-year period (A 5-15, 263). The Board discredited this by stating:

> As to the applicant's medical assistance to the poor, no evidence exists, through independent testimony or documentation, that would verify this work was more than required of all medical students as a part of the medical curriculum.
>
> (Emphasis supplied.)
> (A 16)

Applicant's testimony was under oath, unrebutted, independent, and admissible even under strict evidentiary rules.

The Board also took issue with Petitioner's testimony

concerning his injuries which he asserted prevented him from doing more community service. The Board stated:

> Finally, the applicant did not present any evidence showing the type and extent of his injuries. . . .
>
> (Emphasis supplied.)
> (A 16)

Yet, the Petitioner, himself a medical doctor, stated:

> I had a serious automobile accident. I had back surgery. I had a disc removed. It's kind of hard to survive and do community service when you are hospitalized and disabled.
>
> (A 161-163)

The Board, of course, could have cross examined on the subject but elected not to do so.

The Rules of the Supreme Court of Florida relating to admission to the Bar, Article III, B, Section 3 f, provide in pertinent part:

> The Board is not bound by technical rules of evidence at a formal hearing.

Obviously, the Board did not abide by the rule in considering Applicant's unrebutted testimony and apparently rejected, without reason, that testimony. It is apparent that that rule of evidence was invoked discriminatorily and violated the principle set out in

Washington ex rel. Oregon R. & N. Co. v. Fairchild, supra.

It may be that the Board was frustrated when its position in Specification 4 became untenable because of the obvious First Amendment right of one convicted of an offense to continue to maintain his innocence.

This was compellingly brought home by the testimony of Frank D. Alvarez, Florida Circuit Judge (A 84-107), who recounted his experience as a prosecutor where he had obtained a death sentence in a murder case only to have, 15 years later, the primary witness recant resulting in a finding of innocence of the one convicted (A 96-97).

Obviously, had the defendant not maintained his innocence, he would have been executed!

The Rules of Admission state that any applicant that affirmatively asserts rehabilitation from prior conduct shall be required to produce clear and convincing evidence of rehabilitation (A 208).

The Rules also limit the <u>determination</u> by the Board of the <u>present</u> character and fitness of an applicant (A 199). It thus follows that no matter what an applicant's past he may, by making the requisite showing, be admitted to the practice of law in Florida.

The Board perverted the rules in a manner resulting in a realistically impossible burden. This is shown in the rejection of perfectly good unimpeached testimony.

In *Konigsberg v. State Bar of California*, 353 U.S. 252 (1957), the Court cautioned on the use of good moral character as a factor upon which to reject an applicant. There it was said:

> A. *Good Moral Character*.--The term "good moral character" has long been used as a qualification for
>
> *[353 US 262]
>
> *membership in the Bar and has served a useful purpose in this respect. However, the term, by itself, is unusually ambiguous. It can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer. Such a vague qualification, which is easily adapted to fit personal views and predilections, can be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law.

(Emphasis supplied.)

In dealing with the means of proving good moral character, the opinion in *Konigsberg* states:

> A person called upon to prove his character is compelled to turn to the people who know him.

(Emphasis supplied.)

It logically follows that the Board could prove bad moral character

the same way with its power of subpoena and authority to investigate. No showing was made by the Board in that regard.

Petitioner followed *Konigsberg* and presented clear and convincing evidence of his moral qualifications; the Board submitted nothing in rebuttal. Instead, the Board did what *Konigsberg* warned against by recommending Petitioner not be admitted under a flawed definition of good moral character.

The Board forgot, in its zeal to sustain its charges, that they are to ascertain present good moral character under the rule (A 199). With the morass of tools available (rehabilitation factors (A 199) and burden of proof (A 208)) the resulting definition of good moral character equates to anything desired to justify rejection.

Community service, for instance, while a desirable character factor, cannot constitutionally be a required element of good moral character since human situations are of such variety that this factor may be impossible for many.

Here the admonition of *Konigsberg* is realized in the Board's proceedings and conclusion.

Applicants to practice law are proceeding through the system in great numbers, not only in Florida but throughout the nation.

The problem exemplified by this case is deserving of this Honorable Court's consideration.

CONCLUSION

The Court is requested to issue its most high writ of certiorari requiring the Supreme Court of Florida to forthwith transmit the record by it held in this case to this Honorable Court for a full briefing and consideration.

Respectfully submitted,

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OCTOBER TERM, 1994

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Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO
THE SUPREME COURT OF FLORIDA

APPENDIX
VOLUME ONE

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130 pp

INDEX TO APPENDIX

VOLUME ONE

1. Supreme Court Decision Denying Petition for Review ..... A 1

2. Findings of Fact and Conclusions of Law of Florida Board of Bar Examiners ..... A 3

3. Order Denying Motion for Rehearing ..... A 22

4. Corrected Petition for Review of Findings of Fact and Conclusions of Law of the Florida Board of Bar Examiners with Exhibits ..... A 24

5. Response In Opposition to Corrected Petition for Review ..... A 58

6. Motion for Rehearing ..... A 77

7. Excerpts from Transcript; Testimony of Honorable Frank D. Alvarez, Pages 18-38 ..... A 84

8. Excerpts from Transcript; Testimony of Honorable Bob Anderson Mitcham, Pages 38-54 ..... A 108

VOLUME TWO

9. Excerpts from Transcript, Testimony of Honorable James A. Arnold, Pages 54-59 ..... A 127

10. Excerpts from Transcript; Testimony of Judge Sam Pendino, Pages 91-100 ..... A 134

INDEX TO APPENDIX
Continued

VOLUME TWO
Continued

11. Excerpts from Transcript; Testimony of Carl Neill, Pages 127-135 ..... A 146

12. Excerpts from Transcript; Testimony of Fred L. Buckine, Pages 135-150 ..... A 157

13. Excerpts from Transcript; Testimony of Henry O. Wilson, Pages 158-163 ..... A 175

14. Excerpts from Transcript: Testimony of Felix Ruiz, Pages 8-16 ..... A 183

15. Pardon ..... A 193

16. Excerpts from the Rules of the Supreme Court of Florida Relating to Admissions to the Bar, Article III.B.2.a.-2.c. ..... A 196

17. Excerpts from the Rules of the Supreme Court of Florida Relating to Admissions to the Bar, Article III.B.3.a.-2.c. ..... A 200

18. Excerpts from the Rules of the Supreme Court of Florida Relating to Admissions to the Bar, Article III.B.4.a., b., e. ..... A 206

19. Affidavits ..... A 210

    a. Arthur Noriega, IV ..... A 211
    b. Delano S. Stewart ..... A 214
    c. Joseph Voskerichian ..... A 218
    d. Charles H. Scruggs, III, Esquire ..... A 221
    e. Ronald K. Cacciatore ..... A 224
    f. Laurence I. Goodrich ..... A 227

INDEX TO APPENDIX
Continued

VOLUME TWO
Continued

19. Affidavits Continued

g. Roland Mantiega ..... A 231
h. Julianne M. Holt ..... A 233
i. Ralph M. Guito, Jr., Esquire ..... A 236
j. Thomas F. Granahan ..... A 241
k. Larry E. Solomon ..... A 244
l. Peter N. Busto ..... A 247
m. Susan A. Bohm ..... A 250
n. James C. Adkins ..... A 254

20. Response to Specifications ..... A 256

21. Excerpts from Transcript: Testimony of Richard E. Leon, Pages 204, 207 ..... A 261

DOCUMENT 1

Supreme Court Decision Denying

Petition for Review of Findings of Fact

and Conclusions of Law

IN THE SUPREME COURT OF FLORIDA

FRIDAY, MAY 12, 1995

FLORIDA BOARD OF BAR EXAMINERS

RE: R.E.L. * CASE NO: 84,786
*
*

****

C O N F I D E N T I A L

The Petition for Review of Findings of Fact and Conclusions of Law of the Florida Board of Bar Examiners filed in the above cause is hereby denied.

GRIMES, C.J., OVERTON, SHAW, KOGAN, HARDING, and WELLS concur ANSTEAD, J., dissents

A True Copy

TEST:

TC
cc: Mr. Thomas A. Pobjecky
Ms. Kathryn E. Ressel
Mr. Henry M. Coxe, III
Mr. Michael L. Kinney

/s/ By T. Carroll, Deputy Clerk
Sid J. White [seal]
Clerk, Supreme Court

DOCUMENT 2

Findings of Fact and Conclusions of Law of

The Florida Board of Bar Examiners

In Re: Application of
Richard Edward Leon, Sr.
For Admission to
The Florida Bar

BEFORE THE FLORIDA BOARD OF BAR EXAMINERS

IN RE: Application of)
RICHARD EDWARD LEON, SR)
for Admission to)
The Florida Bar)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

FINDINGS BACKGROUND

The applicant, Richard Edward Leon, Sr., was born on June 24, 1934 in Tampa, Florida. He completed his secondary education in Tampa, Florida in 1952. The applicant attended the University of Tampa from August 1952 to May 1953 and also June 1955 to February 1960, when a Bachelor of Science degree was awarded him. Applicant Leon entered Stetson Law School in February 1960 and attended until July 1962. He enrolled in Samford University Cumberland Law School in September 1962 and the degree of Juris Doctor was conferred upon him in February 1964. The applicant entered Universidad Mudial Dominican Isabel Azuiar in the Dominican Republic in July 1987 and graduated in August 1990 with a Doctorate in Medicine.

The applicant was initially admitted to The Florida Bar in 1966. The applicant was subsequently disbarred by order of the Supreme Court of Florida issued June 1987.

The applicant sought readmission to The Florida Bar by filing an Application for Admission to The Florida Bar on June 12, 1992 and to the Florida Bar Examination on May 27, 1992. He

successfully completed the July 1992 General Bar Examination and the November 1992 Multi-State Professional Responsibility Exam.

During the course of the usual background investigation conducted by the board, certain items of information that reflected adversely upon the applicant's fitness under the provisions of Article III, Section 2 of the Rules of the Supreme Court of Florida Relating to Admissions to the Bar came to the Board's attention. An extensive investigation of the applicant's activities in question was undertaken.

The applicant was invited to appear before the Board for an investigative hearing and he did so appear on June 18, 1993. Following the investigative hearing, the Board determined that Specifications should be prepared and served upon the applicant and that the matter of his character and fitness be considered at a formal hearing.

The Specifications were served upon the applicant on September 3, 1993. The applicant was advised of his right to a formal hearing on the Specifications and the right to present witnesses and any other evidence that might be pertinent to the

issues. The Board's authority to issue subpoenas was made available to the applicant.

The applicant filed a response to the Specifications on October 12, 1993. By letter dated November 9, 1993, the applicant's attorney requested that his client's hearing be scheduled during the Board's July 1994 meeting.

The formal hearing was convened on July 15, 1994 in Tampa, Florida. The applicant appeared at the hearing and was represented by Michael L. Kinney, Esquire and J. Clint Brown, Esquire.

The Specifications previously served upon the applicant included four charges that read as follows:

Specification 1

> That while serving as a Florida circuit court judge and as a member of The Florida Bar, you were investigated by the Judicial Qualifications Commission relative to your engaging in ex parte communications with Chief Circuit Court Judge Arden Mays Merckle in relation to the criminal case of Alisa D. Avery. That the Judicial Qualifications Commission filed a notice of Formal Charges in five counts against you on April 20, 1983. That a six count Amended Notice of Formal Charges was filed against you on May 13, 1983. That you were subsequently adjudicated guilty by the Commission on four of the counts the circumstances of which are clearly set forth in the Commission's Findings of Fact, Conclusions of Law and Recommendations attached

here as Exhibit "A." The Supreme Court of Florida subsequently upheld the Commission's Findings and ordered your removal from judicial office.

Specification 2

That you were indicted on July 13, 1983 by a Hillsborough County grand jury on two counts of perjury, one count of official misconduct, one count of bribery and one count of unlawful compensation. That a copy of the Indictment is attached hereto as Exhibit "B." That you were subsequently tried by a jury and found guilty on December 14, 1993 on the perjury counts and one count of official misconduct. That the appellate court later set aside your conviction on the count of official misconduct and vacated the sentence as the underlying statute had been held unconstitutionally vague. That you were sentenced to serve five years probation, fined $5,000.00 in court costs and ordered to perform 1,000 hours of community service with HRS. That a copy of the Judgment and Probation Order is Exhibit "C."

Specification 3

That you were admitted to The Florida Bar in 1966. That by order of the Supreme Court of Florida issued on June 11, 1987, you were disbarred from the practice of law based upon your felony convictions and related removal from judicial office. That a copy of the Court's disbarment order is attached as Exhibit "D."

Specification 4

That you continue with a pattern of dishonesty as demonstrated by:

(A) You continue to deny the facts surrounding the alteration of Alisa D. Avery's criminal sentence which ultimately resulted in your conviction on two counts of perjury. Specifically, you relayed to the

Board during the application process and during the investigative hearing that your observance of Ms. Avery being fingerprinted prompted your ex parte conversation with Judge Merckle.

That these statements to the Board are false or lacking in candor in that the JQC and the Grand Jury found your conversation with Ms. Avery's father led to your conferring with Judge Merckle, rather than your viewing her in the fingerprinting process.

That said response that on the day of Alisa Avery's sentencing you saw her being fingerprinted from your office and that was the reason for your going to the office of Judge Merckle was false, misleading or lacking in candor. That you went to Judge Merckle's office, in truth and in fact, after conferring with Alisa Avery's father, Arthur Avery, Sr.

(B) That you appeared before the division of the Board on June 18, 1993 at which time you were questioned on matters material to the Board's investigation into your character and fitness for admission to The Florida Bar. That at said hearing you gave the following testimony under oath in response to the following questions:

Q. Are you guilty of perjury?

A. I did not commit perjury. I did not commit perjury. I have had a very, very law-abiding life. I've raised my family as a law-abiding citizen. I was guilty of lying to the investigator for the JQC. I admit that and that was a colossal mistake and I'm not guilty of perjury.

Q. Were you under oath when you testified before the JQC?

A. Yes, sir.

Q. I'm not an attorney. Would you describe to me, please, what is perjury?

A. Perjury is being under oath and giving a false statement.

Q. Well, you told us that you lied to the JQC--

A. Yes, sir.

Q. -- under oath.

A. No, sir.

Q. That's what you told us before, "I lied to the JQC."

A. Yes, sir, investigator, but that's not under oath, sir.

Q. Subsequently under oath you didn't lie to the JQC?

A. I was convicted of lying to the JQC. Your question was did I commit perjury and I did not commit perjury.

That said testimony that you did not commit perjury was false, misleading and lacking in candor in that you were convicted of perjury for having lied to the JQC.

(C) Additionally, that at said investigative hearing you testified that you recanted your false statements to the JQC's investigator before Judge Merckle did. That said testimony was false, misleading or lacking in condor because you did not recant until after discovering Judge Merckle was recanting.

(D) Further, that you told an investigator from the Florida Parole Commission and the Office of Executive Clemency on or about April, 1992 that you were pursuing medical licensure and not a career in law. That said statements were false, misleading or lacking in candor in that you are currently seeking admission to the bar in order to practice and have not pursued medical licensure since July, 1991.

FINDINGS OF FACT

Specification 1 addresses the applicant's removal from judicial office following the Supreme Court of Florida's upholding of the Judicial Qualification Commission's ("JQC") recommendation that he be removed. Specifically, while serving as a Florida circuit court judge and as a member of The Florida Bar, the applicant was adjudicated guilty by the JQC on the following four counts:

(1) Improperly participating in ex parte communications with Circuit Judge Arden Mays Merckle about the criminal cases of Alisa Dean Avery; improperly securing the alteration of a sentence imposed on the defendant Avery; improperly engaging in repeated ex parte communications with the State Attorney's Office about the disposition of the Avery case; and improperly fraternizing with the defendant Avery's father while his daughter's case was

pending before the Criminal Justice Division of the Circuit Court for the Thirteenth Judicial Circuit on which the applicant sat.

(2) Engaging in the sale of land to the defendant Avery's father when the defendant's cases were pending before the court on which he sat.

(3) Conspiring with Judge Merckle to deny their ex parte communications, and then implementing this scheme by denying the same in response to inquiries by the press and by a JQC investigator.

(4) Falsely stating on two occasions to a JQC investigator that the applicant had not had contact with the defendant Avery's father the day of her sentencing; falsely stating under oath that the statements given to the JQC investigator were true; falsely stating under oath that his ex parte communications with Judge Merckle the day of the sentencing were the result of the applicant having seen the defendant being fingerprinted, when actually they resulted from his contact with the defendant's father.

The JQC's findings, conclusions and recommendation of removal were reviewed and upheld by the Supreme Court.

Specification 2 addresses the applicant's criminal conviction on two counts of perjury and on one count of official misconduct. The perjury convictions were subsequently upheld on appeal in Leon v. State of Florida, 474 So. 2d 832 (Fla. 2d DCA 1985).

The applicant filed a sworn Amended Answer and Affirmative Defenses to Specifications ("Answer") executed by him on October 12, 1993. In his Answer and in his sworn testimony, the applicant admitted the first two Specifications. Accordingly, the Board finds that Specifications 1 and 2 have been proven. The language of Specifications 1 and 2 reproduced above under the Findings Background is adopted by the Board as its specific findings of fact.

As to proven Specification 1, the Board finds that it is, standing alone, disqualifying for admission to the Florida Bar. As to proven Specification 2, the board finds that it is, standing alone, disqualifying for admission to the Florida Bar.

Specification 3 addresses the applicant's disbarment in Florida in 1987 based on his felony convictions (see Specification 2) and related removal from judicial office (see Specification 1). In his Answer and during the formal hearing, the applicant admitted that his disbarment was based on his felony convictions, but denied that

it was based on his removal from judicial office. The Supreme Court, however, after noting the applicant's removal from office and subsequent convictions for perjury, disbarred the applicant because of the "nature of [his] actions," demonstrating that the Court considered the circumstances underlying both his felony convictions and his removal from office. The Florida Bar v. Leon, 510 So. 2d 873 (Fla. 1987). The Board finds that the facts giving rise to the disqualification from office and the felony convictions are sufficiently indistinguishable, that the applicant was on notice of the substance of the allegations and that they are proven. The Board further finds that this disbarment and its underlying circumstances standing alone disqualify him for admission to The Florida Bar.

Specification 4 addressed the applicant's continued dishonesty about his removal from judicial office and his felony convictions. In his Answer and during the formal hearing, the applicant denied the allegations in Specification 4 and in fact essentially denied the factual underpinnings of Specifications 1, 2, and 3. Actual evidence of the matters giving rise to the removal, criminal convictions and disbarment was not presented at the formal hearing.

Therefore, based on the record before it, the Board finds that the evidence is insufficient to support the allegations of Specification 4 and it is not proven.

During the formal hearing, the applicant urged the Board to conclude that he had been rehabilitated as provided by applicable rules. He called numerous witnesses who testified to his good character and moral standing; his professional ability; his lack of malice concerning his removal, disbarment and convictions; and his desire to conduct himself in exemplary fashion in the future. The applicant offered proof of his 1000 hours of community service, followed by three or four months of paid additional work at the Department of Health and Rehabilitative Services ("HRS"); his own testimony that he proved medical assistance to the poor while he attended medical school; and his work as a paralegal as evidence of his rehabilitation. The applicant further claimed that injuries and taking care of his family, including putting his children through college, have kept him from doing other community service. The applicant has failed to offer clear and convincing evidence of his rehabilitation as required by law.

The applicant's completion of 1000 hours of community service at HRS was required as part of his criminal sentence. Although this would constitute satisfaction of "strict compliance with the specific conditions of any . . . judicial . . . order" (see Fla. Bar Admiss. R., Art. III, §4.e.(1)), no evidence exists that he contributed a single additional hour of voluntary community service to the HRS. Simply stated, had the applicant not performed the 1,000 hours of work at HRS he would have exposed himself to a probation violation and potential prison sentence.

The applicant's subsequent work at HRS and as a paralegal was paid, not voluntary. As to the applicant's medical assistance to the poor, no evidence exists, through independent testimony or documentation, that would verify this work was more than that required of all medical students as part of the medical school curriculum. Finally, the applicant did not present any evidence showing the type and extent of his injuries that allegedly prevented him from performing community service. The length of time the applicant has had to perform affirmative steps showing rehabilitation is significant.

Without such evidence, the applicant has not presented sufficient positive actions indicating that he has undertaken a useful and constructive place in society or that he has provided service to his community. Such community service is an implied obligation of members of the bar and, thus, those seeking admission to the bar. See **Fla. Bar Admiss. R., Art. III, §4.e(7).** Such positive actions and community service are particularly imperative in the applicant's case given the egregious nature of his misconduct and the position of highest trust that he betrayed as a judge and as a member of The Florida Bar. Instead, the applicant has merely shown that he is now living as and doing those things he should have done throughout life, such as complying with the terms of his sentence, working and supporting his family. See Fla. Bar Admiss. R., Art. III, §4.e(7).

Upon consideration of the applicant's Answer, the exhibits introduced at the formal hearing, and the formal hearing testimony, the Board finds that Specifications 1, 2 and 3 are conclusively proven. The Board further finds that the applicant's evidence fails to mitigate the seriousness of any of the proven allegations. Rarely is this board confronted with conclusive evidence of moral

turpitude rising to the level of egregiousness as exists on this record, and the level of proof reasonably demanded to establish rehabilitation is lacking.

The Board finds that the applicant's formal hearing presentation completely failed to establish satisfactory rehabilitation by clear and convincing evidence as required by **Fla. Bar Admiss. R., Art. III, §4.e(7).**

CONCLUSIONS OF LAW

Based upon the findings set forth above, the Board concludes that the proven allegations of Specifications 1, 2 and 3 are individually and collectively disqualifying for admission to the Florida Bar. Such proven allegations establish that the applicant, while a circuit judge and a member of The Florida Bar, engaged in egregious misconduct for which the applicant was found, beyond a reasonable doubt, guilty of perjury. This conviction for a crime of the highest moral turpitude was reviewed and upheld on appeal. Leon v. State of Florida, 474 So. 2d 832 (Fla. 2d DCA 1985).

Given those circumstances, the applicant appeared before the Board with the difficult burden of demonstrating his character and fitness for returning to the Bar. In reaching its conclusion as to the applicant's current character and fitness to return to the practice of law, the Board is guided by the following factors contained in Fla. Bar Admiss. R., Art. III, §2.c:

(1) the applicant's age at the time of the conduct;
(2) the reliability of the information concerning the conduct;
(3) the reliability of the information concerning the conduct;
(4) the seriousness of the conduct;
(5) the factors underlying the conduct;
(6) the cumulative effect of the conduct or information;
(7) the evidence of rehabilitation;
(8) the applicant's positive social contributions since the conduct;
(9) the applicant's candor in the admissions process;
(10) the materiality of any omissions or misrepresentations.

In applying the above-listed factors to the applicant's case, the Board observes that the applicant was 48 years of age, had been an attorney for over 15 years, and a judge for at least four years at the time of his misconduct. Despite his age, experience, and the high standards expected of one holding the position of Circuit Judge, the applicant abused his position through his misconduct outlined above in the Findings of Fact. Moreover, he then compounded this misconduct through false statements and perjury. The seriousness

of such behavior by one who has taken an oath to uphold the law is uncontested.

Given the seriousness of the applicant's misconduct, he was required to produce clear and convincing evidence of his rehabilitation. As noted above in the Findings of Fact, although the applicant claims rehabilitation, he failed to offer satisfactory evidence of it. The especially outrageous nature of the applicant's crime and the position of absolute trust that the applicant betrayed as a judge and as a member of The Florida Bar demand proof of such rehabilitation. The Board concludes that the applicant totally failed in this respect.

It is, therefore, the conclusion of the Board that the evidence before it as set forth in the foregoing Findings clearly and unequivocally establishes that the applicant fails to meet the standards of conduct and fitness required under the provisions of Fla. Bar Admiss. R., Art. III, §2.

RECOMMENDATION

WHEREFORE, the Board recommends that Richard Edward Leon, Sr. not be admitted to The Florida Bar under the provisions

of Article VII of the Rules of the Supreme court of Florida Relating to Admissions to the Bar.

DATED this 30th day of September, 1994.

Kathryn E. Ressel
Deputy Executive Director
Florida Board of Bar Examiners

Original: Michael L. Kinney, Attorney for Applicant

CERTIFIED MAIL NO.: Z 751 816 477
RETURN RECEIPT REQUESTED

Copy: Henry M. Coxe, III, Board's Attorney

DOCUMENT 3

Order Denying
Motion for Rehearing

IN THE SUPREME COURT OF FLORIDA

THURSDAY, JUNE 29, 1995

FLORIDA BOARD OF BAR EXAMINERS

RE: R.E.L. * CASE NO: 84,786
*
*
****

C O N F I D E N T I A L

The Motion for Rehearing filed in the above cause is hereby denied.

GRIMES, C.J., OVERTON, SHAW, KOGAN, HARDING, WELLS and ANSTEAD, JJ., concur

A True Copy

TEST:

/s/ By T. Carroll Deputy Clerk
Sid J. White [seal]
Clerk, Supreme Court

TC

cc: Mr. Thomas A. Pobjecky
Ms. Kathryn E. Ressel
Mr. Henry M. Coxe, III
Mr. Michael L. Kinney

DOCUMENT 4

Corrected Petition for Review of

Findings of Fact and Conclusions of Law of

The Florida Board of Bar Examiners

In Re: Application of
Richard Edward Leon, Sr.
For Admission to
The Florida Bar

IN THE SUPREME COURT OF FLORIDA

IN RE: APPLICATION OF	)	
RICHARD EDWARD LEON, SR	)	CASE NO: _____
FOR ADMISSION TO	)	BAR NO: 61461
THE FLORIDA BAR	)	

CORRECTED

PETITION FOR REVIEW OF

FINDINGS OF FACT

AND

CONCLUSIONS OF LAW OF

THE FLORIDA BOARD OF BAR EXAMINERS

MICHAEL L. KINNEY, ESQUIRE
Florida Bar #43085
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(813) 872-8125 (Fax)
Attorney for Applicant,
RICHARD E. LEON, SR.

INDEX

PAGE

Record References 1

Jurisdiction 2

Statement of the Facts 3

Argument 8

Relief Sought 12

Certificate of Service 13

Appendix

RECORD REFERENCES

The transcript of the Formal Hearing before The Florida Board of Bar Examiners will be referred to by the letters "TT ___" followed by the appropriate page references.

The Findings of Fact and Conclusions of Law will be referred to as "Findings ___" followed by the appropriate page references.

Documentary evidence will be referred to as:

"Board's Exhibit __"

Applicant's Exhibit __"

Other portions of the Record will be referred to as titled or by appropriate description.

JURISDICTION

Applicant, RICHARD E. LEON, SR. (Applicant) being dissatisfied with the Findings of Fact and Conclusions of Law of The Florida Board of Bar Examiners, submits this Petition for Review pursuant to Article III, §4b. of the Rules of the Supreme Court of Florida relating to Admissions to the Bar.

STATEMENT OF THE FACTS

The Applicant was admitted to practice law in Florida in June of 1966 and became circuit judge in Hillsborough County, Florida, in January, 1973. Applicant was removed from office by this Court in November of 1983 and then disbarred from this Court on June 11, 1987 (Findings P. 4).

Applicant was indicted on July 13, 1983 on two counts of perjury and one count of official misconduct. He was convicted but the official misconduct charge was reversed on appeal.

Applicant was placed on probation, fined $5,000.00 and ordered to perform one thousand hours of community service (Findings P. 4).

After completing his community service, Applicant obtained a Doctorate in Medicine in the Dominican Republic (Findings P. 2) and in 1992 received a full pardon for the convictions (TT 9-15).

Applicant reapplied for readmission to The Florida Bar and successfully completed the examination in November of 1992 (Findings P. 2).

The Board served specifications concerning Applicant's character and fitness including four "charges" as follows:

Specification 1

> That while serving as a Florida circuit court judge and as a member of The Florida Bar, you were investigated by the Judicial Qualifications Commission relative to your engaging in ex parte communications with Chief Circuit Court Judge Arden Mays Merckle in relation to the criminal case of Alisa D. Avery. That the Judicial Qualifications Commission filed a notice of Formal Charges in five counts against you on April 20, 1983. That a six count Amended Notice of Formal Charges was filed against you on May 13, 1983. That you were subsequently adjudicated guilty by the Commission on four of the counts the circumstances of which are clearly set forth in the Commission's Findings of Fact, Conclusions of Law and Recommendations attached here as Exhibit "A". The Supreme Court of Florida subsequently upheld the Comm-

ission's Findings and ordered your removal from judicial office.

Specification 2

That you were indicted on July 13, 1983 by a Hillsborough County grand jury on two counts of perjury, one count of official misconduct, one count of bribery and one count of unlawful compensation. That a copy of the Indictment is attached hereto as Exhibit "B". That you were subsequently tried by a jury and found guilty on December 14, 1993 on the perjury counts and one count of official misconduct. That the appellate court later set aside your conviction on the count of official misconduct and vacated the sentence as the underlying statute had been held unconstitutionally vague. That you were sentenced to serve five years probation, fined $5,000.00 in court costs and ordered to perform 1,000 hours of community service with HRS. That a copy of the Judgment and Probation Order is Exhibit "C".

Specification 3

That you were admitted to The Florida Bar in 1966. That by order of the Supreme Court of Florida issued on June 11, 1987, you were disbarred from the practice of law based upon your felony convictions and related removal from judicial office. That a copy of the Court's disbarment order is attached as Exhibit "D".

Specification 4

That you continue with a pattern of dishonesty as demonstrated by:

(A) You continue to deny the facts surrounding the alteration of Alisa D. Avery's criminal sentence which ultimately resulted in your conviction on two counts of perjury. Specifically, you relayed to the Board during the application process and during the investigative hearing that your observance of Ms. Avery being fingerprinted prompted you ex parte conversation with Judge Merckle.

That these statements to the Board are false or lacking in candor in that the JQC and the Grand Jury found your conversation with Ms. Avery's father led to your conferring with Judge Merckle, rather than your viewing her in the fingerprinting process.

That said response that on the day of Alisa Avery's sentencing you saw her being fingerprinted from your office and that was the reason for your going to the office of Judge Merckle was false, misleading or lacking in candor. That you went to Judge Merckle's office, in truth and in fact, after conferring with Alisa Avery's father, Arthur Avery, Sr.

(B) That you appeared before the division of the Board on June 18, 1993 at which time you were questioned on matters material to the Board's investigation into your character and fitness for admission to The Florida Bar. That at said hearing you gave the following testimony under oath in response to the following questions:

Q. Are you guilty of perjury?

A. I did not commit perjury. I did not commit perjury. I have had a very, very law-abiding life. I've raised my family as

a law-abiding citizen. I was guilty of lying to the investigator for the JQC. I admit that and that was a colossal mistake and I'm not guilty of perjury.

Q. Were you under oath when you testified before the JQC?

A. Yes, sir.

Q. I'm not an attorney. Would you describe to me, please, what is perjury?

A. Perjury is being under oath and giving a false statement.

Q. Well, you told us that you lied to the JQC--

A. Yes, sir.

Q. -- under oath.

A. No, sir.

Q. That's what you told us before, "I lied to the JQC."

A. Yes, sir, investigator, but that's not under oath, sir.

Q. Subsequently under oath you didn't lie to the JQC?

A. I was convicted of lying to the JQC. Your question was did I commit perjury and I did not commit perjury.

That said testimony that you did not commit perjury was false, misleading and lacking in candor in that you were convicted of perjury for having lied to the JQC.

(C) Additionally, that at said investigative hearing you testified that you recanted your false statements to the JQC's investigator before Judge Merckle did. That said testimony was false, misleading or lacking in condor because you did not recant until after discovering Judge Merckle was recanting.

(D) Further, that you told an investigator from the Florida Parole Commission and the Office of Executive Clemency on or about April, 1992 that you were pursuing medical licensure and not a career in law. That said statements were false, misleading or lacking in candor in that you are currently seeking admission to the bar in order to practice and have not pursued medical licensure since July, 1991.

(Findings P 3-6)

Specifications 1, 2 and 3 were basically admitted by the Applicant (TT 5) and specifically 4 was denied. (TT 5-6, 174-180).

The Board found that the Applicant failed to establish by clear and convincing evidence satisfactory rehabilitation (Findings P. 11) and recommended against his admission (Findings P. 13)

ARGUMENT

At the outset of the formal hearing held on July 15, 1994, the Chairman of the Board stated:

> . . . the issues drawn under the pleadings will be decided solely upon the record made in this proceeding.
>
> (Emphasis Supplied)

The Applicant submitted 17 affidavits all attesting to his moral character and fitness to practice law, including one from now deceased James C. Atkins, former Justice of this Court (TT 51) at the formal hearing.

At the formal hearing, Applicant presented the following witnesses:

1) the Applicant (TT 164-230);

2) Frank D. Alvarez, Circuit Judge and Chief Judge of the Thirteenth Judicial Circuit (TT 18-38);

3) Bob Anderson Mitchum, Circuit Judge (TT 38-59);

4) Nelson D. Castellano, Medical Doctor (TT 59-62);

5) Paul B. Johnson, Attorney at Law (TT 63-90);

6) Sam Pendino, Circuit Judge (TT 91-100);

7) Cedric P. Hay, Attorney at Law (TT 100-110);

8) Sylvia Gonzalez, Judicial Assistant in Hillsborough County, Florida (TT 110-119);

9) Rudy Mayoz, Medical Doctor (TT 119-126);

10) Carl Neill, Retired District Administrator for The Florida Department of Health and Rehabilitative Services in Hillsborough, Hardee, Highland and Manatee Counties (TT 127-135);

11) Fred L. Buckine, Former Judge and Attorney at Law (TT 135-150);

12) Charles Martin, Retired Car Parts Businessman (TT 150-153);

13) Bruce Wayne Miller, Chiropractic Physician (TT 153-158);

14) Henry D. Wilson, Attorney at Law and Retired Judge (TT 158-159);

15) James D. Arnold, Former Judge and Attorney at Law (TT 57-59).

These witnesses stated facts attesting to the Applicant's rehabilitation, character and fitness to practice law in Florida.

The Board's only witness was Feliz Ruiz, the Parole Examiner who investigated the Applicant in relation to his request for a pardon (TT 9-17).

The Board, in finding Applicant failed to establish rehabilitation (Findings P. 11) established a policy which resulted in an impossible burden on any applicant convicted of perjury to establish rehabilitation. The Board found the evidence on Specification 4 insufficient and found it not proven but found Specifications 1, 2 and 3 proven and that any one would be adequate reason to recommend against admission.

Condensing the Board's Findings and Conclusions, it becomes apparent that because the Applicant continued to assert his innocence, he was not rehabilitated (Findings P. 1-9).

The Board's position assumes a perfect system of justice. The testimony of Judge Alvarez pointed out that the system was not infallible and recited an instance where, as the prosecutor, he had obtained conviction calling for the death penalty. The primary witness, 15 years later, recanted and fortunately innocence was established before the death penalty was imposed (TT 28-29).

Had that accused acknowledged his guilt straight away, he would have been wrongfully executed. Thus, the position must be that a person even though convicted, has a constitutional right to express his opinion of his innocence under the First Amendment to

the Constitution of the United States and Section 4 of Article I of the Constitution of the State of Florida. This opinion should not be held against [redacted] in these proceedings.

As this Honorable Court can readily see, the result of permitting such a consideration is a catch 22 wherein an applicant must lie to show rehabilitation! Here, the overwhelming evidence is that the Applicant accepted his conviction without malice (TT generally). See Florida Bd. of Bar Examiners RE: L. K. D., 397 So2d 673 (Fla. 1981).

The Board alluded to Applicant's lack of community service and positive actions indicating a useful and constructive place in society (Findings P. 10-11) and concluded that:

> Instead, the applicant has merely shown that he is now living as and doing those things he should have done throughout life, such as complying with the terms of his sentence, working and supporting his family.

Here the Board appears biased; the Applicant testified he voluntarily provided free medical service and emergency room duty over a four year period (TT 207-208, 226-227). The Board discredited this in stating:

> As to the applicant's medical assistance to the poor, no evidence exists, through independent testimony or documentation, that would verify this work as more than required of all medical students as a part of the medical curriculum.
>
> (Emphasis supplied)

(Findings P. 10)

Applicant's testimony was unrebutted, independent and admissible under strict evidentiary rules.

The Board also took issue with Applicant's testimony concerning his injuries which Applicant asserted prevented him from doing more community service. The Board stated:

> Finally, the applicant did not present any evidence showing the type and extent of his injuries . . .
>
> (Emphasis supplied)

Findings p. 10.

Yet, the Applicant, himself a medical doctor, stated:

> I had a serious automobile accident. I had back surgery. I had a disc removed. It's kind of hard to survive and do community service when you are hospitalized and disabled. (TT 204)

The Rules of the Supreme Court of Florida relating to admission to the Bar, Article III, B, Section 3 f, provides in pertinent part:

> The Board is not bound by technical rules of evidence at a formal hearing.

Obviously, the Board did not abide the rule in considering Applicant's unrebutted testimony and apparently rejected, without reason, that testimony.

RELIEF SOUGHT

The Court is requested, upon review, to grant this Petition for Review and order the admission of the applicant to The Florida Bar.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served by United States mail upon KATHRYN E. RESSEL, ESQUIRE, Deputy Executive Director, Florida Board of Bar Examiners, 1891 Eider Court, Tallahassee, Florida, 32399-1750, this the 28th day of November, A.D., 1994.

MICHAEL L. KINNEY, ESQUIRE
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(813) 875-5445
(813) 872-8125 (Fax)
Attorney for RICHARD E. LEON

IN THE SUPREME COURT OF FLORIDA

IN RE: APPLICATION OF	)	
RICHARD EDWARD LEON, SR	)	CASE NO: _____
FOR ADMISSION TO	)	BAR NO: 61461
THE FLORIDA BAR	)	

EXHIBIT TO

PETITION FOR REVIEW OF

FINDINGS OF FACT

AND

CONCLUSIONS OF LAW OF

THE FLORIDA BOARD OF
BAR EXAMINERS

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BEFORE THE FLORIDA BOARD OF BAR EXAMINERS

IN RE: Application of)
RICHARD EDWARD LEON, SR)
for Admission to)
The Florida Bar)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

FINDINGS BACKGROUND

The applicant, Richard Edward Leon, Sr., was born on June 24, 1934 in Tampa, Florida. He completed his secondary education in Tampa, Florida in 1952. The applicant attended the University of Tampa from August 1952 to May 1953 and also June 1955 to February 1960, when a Bachelor of Science degree was awarded him. Applicant Leon entered Stetson Law School in February 1960 and attended until July 1962. He enrolled in Samford University Cumberland Law School in September 1962 and the degree of Juris Doctor was conferred upon him in February 1964. The applicant entered Universidad Mudial Dominican Isabel Azuiar in the Dominican Republic in July 1987 and graduated in August 1990 with a Doctorate in Medicine.

The applicant was initially admitted to The Florida Bar in 1966. The applicant was subsequently disbarred by order of the Supreme Court of Florida issued June 1987.

The applicant sought readmission to The Florida Bar by filing an Application for Admission to The Florida Bar on June 12, 1992 and to the Florida Bar Examination on May 27, 1992. He

successfully completed the July 1992 General Bar Examination and the November 1992 Multi-State Professional Responsibility Exam.

During the course of the usual background investigation conducted by the board, certain items of information that reflected adversely upon the applicant's fitness under the provisions of Article III, Section 2 of the Rules of the Supreme Court of Florida Relating to Admissions to the Bar came to the Board's attention. An extensive investigation of the applicant's activities in question was undertaken.

The applicant was invited to appear before the Board for an investigative hearing and he did so appear on June 18, 1993. Following the investigative hearing, the Board determined that Specifications should be prepared and served upon the applicant and that the matter of his character and fitness be considered at a formal hearing.

The Specifications were served upon the applicant on September 3, 1993. The applicant was advised of his right to a formal hearing on the Specifications and the right to present witnesses and any other evidence that might be pertinent to the

issues. The Board's authority to issue subpoenas was made available to the applicant.

The applicant filed a response to the Specifications on October 12, 1993. By letter dated November 9, 1993, the applicant's attorney requested that his client's hearing be scheduled during the Board's July 1994 meeting.

The formal hearing was convened on July 15, 1994 in Tampa, Florida. The applicant appeared at the hearing and was represented by Michael L. Kinney, Esquire and J. Clint Brown, Esquire.

The Specifications previously served upon the applicant included four charges that read as follows:

Specification 1

> That while serving as a Florida circuit court judge and as a member of The Florida Bar, you were investigated by the Judicial Qualifications Commission relative to your engaging in ex parte communications with Chief Circuit Court Judge Arden Mays Merckle in relation to the criminal case of Alisa D. Avery. That the Judicial Qualifications Commission filed a notice of Formal Charges in five counts against you on April 20, 1983. That a six count Amended Notice of Formal Charges was filed against you on May 13, 1983. That you were subsequently adjudicated guilty by the Commission on four of the counts the circumstances of which are clearly set forth in the Commission's Findings of Fact, Conclusions of Law and Recommendations attached

here as Exhibit "A." The Supreme Court of Florida subsequently upheld the Commission's Findings and ordered your removal from judicial office.

Specification 2

That you were indicted on July 13, 1983 by a Hillsborough County grand jury on two counts of perjury, one count of official misconduct, one count of bribery and one count of unlawful compensation. That a copy of the Indictment is attached hereto as Exhibit "B." That you were subsequently tried by a jury and found guilty on December 14, 1993 on the perjury counts and one count of official misconduct. That the appellate court later set aside your conviction on the count of official misconduct and vacated the sentence as the underlying statute had been held unconstitutionally vague. That you were sentenced to serve five years probation, fined $5,000.00 in court costs and ordered to perform 1,000 hours of community service with HRS. That a copy of the Judgment and Probation Order is Exhibit "C."

Specification 3

That you were admitted to The Florida Bar in 1966. That by order of the Supreme Court of Florida issued on June 11, 1987, you were disbarred from the practice of law based upon your felony convictions and related removal from judicial office. That a copy of the Court's disbarment order is attached as Exhibit "D."

Specification 4

That you continue with a pattern of dishonesty as demonstrated by:

(A) You continue to deny the facts surrounding the alteration of Alisa D. Avery's criminal sentence which ultimately resulted in your conviction on two counts of perjury. Specifically, you relayed to the

Board during the application process and during the investigative hearing that your observance of Ms. Avery being fingerprinted prompted you ex parte conversation with Judge Merckle.

That these statements to the Board are false or lacking in candor in that the JQC and the Grand Jury found your conversation with Ms. Avery's father led to your conferring with Judge Merckle, rather than your viewing her in the fingerprinting process.

That said response that on the day of Alisa Avery's sentencing you saw her being fingerprinted from your office and that was the reason for your going to the office of Judge Merckle was false, misleading or lacking in candor. That you went to Judge Merckle's office, in truth and in fact, after conferring with Alisa Avery's father, Arthur Avery, Sr.

(B) That you appeared before the division of the Board on June 18, 1993 at which time you were questioned on matters material to the Board's investigation into your character and fitness for admission to The Florida Bar. That at said hearing you gave the following testimony under oath in response to the following questions:

Q. Are you guilty of perjury?

A. I did not commit perjury. I did not commit perjury. I have had a very, very law-abiding life. I've raised my family as a law-abiding citizen. I was guilty of lying to the investigator for the JQC. I admit that and that was a colossal mistake and I'm not guilty of perjury.

Q. Were you under oath when you testified before the JQC?

A. Yes, sir.

Q. I'm not an attorney. Would you describe to me, please, what is perjury?

A. Perjury is being under oath and giving a false statement.

Q. Well, you told us that you lied to the JQC--

A. Yes, sir.

Q. -- under oath.

A. No, sir.

Q. That's what you told us before, "I lied to the JQC."

A. Yes, sir, investigator, but that's not under oath, sir.

Q. Subsequently under oath you didn't lie to the JQC?

A. I was convicted of lying to the JQC. Your question was did I commit perjury and I did not commit perjury.

That said testimony that you did not commit perjury was false, misleading and lacking in candor in that you were convicted of perjury for having lied to the JQC.

(C) Additionally, that at said investigative hearing you testified that you recanted your false statements to the JQC's investigator before Judge Merckle did. That said testimony was false, misleading or lacking in condor because you did not recant until after discovering Judge Merckle was recanting.

(D) Further, that you told an investigator from the Florida Parole Commission and the Office of Executive

Clemency on or about April, 1992 that you were pursuing medical licensure and not a career in law. That said statements were false, misleading or lacking in candor in that you are currently seeking admission to the bar in order to practice and have not pursued medical licensure since July, 1991.

FINDINGS OF FACT

Specification 1 addresses the applicant's removal from judicial office following the Supreme Court of Florida's upholding of the Judicial Qualification Commission's ("JQC") recommendation that he be removed. Specifically, while serving as a Florida circuit court judge and as a member of The Florida Bar, the applicant was adjudicated guilty by the JQC on the following four counts:

(1) Improperly participating in ex parte communications with Circuit Judge Arden Mays Merckle about the criminal cases of Alisa Dean Avery; improperly securing the alteration of a sentence imposed on the defendant Avery; improperly engaging in repeated ex parte communications with the State Attorney's Office about the disposition of the Avery case; and improperly fraternizing with the defendant Avery's father while his daughter's case was pending before the Criminal Justice Division of the Circuit Court for the Thirteenth Judicial Circuit on which the applicant sat.

(2) Engaging in the sale of land to the defendant Avery's father when the defendant's cases were pending before the court on which he sat.

(3) Conspiring with Judge Merckle to deny their ex parte communications, and then implementing this scheme by denying the same in response to inquiries by the press and by a JQC investigator.

(4) Falsely stating on two occasions to a JQC investigator that the applicant had not had contact with the defendant Avery's father the day of her sentencing; falsely stating under oath that the statements given to the JQC investigator were true; falsely stating under oath that his ex parte communications with Judge Merckle the day of the sentencing were the result of the applicant having seen the defendant being fingerprinted, when actually they resulted from his contact with the defendant's father.

The JQC's findings, conclusions and recommendation of removal were reviewed and upheld by the Supreme Court.

Specification 2 addresses the applicant's criminal conviction on two counts of perjury and on one count of official misconduct.

The perjury convictions were subsequently upheld on appeal in Leon v. State of Florida, 474 So. 2d 832 (Fla. 2d DCA 1985).

The applicant filed a sworn Amended Answer and Affirmative Defenses to Specifications ("Answer") executed by him on October 12, 1993. In his Answer and in his sworn testimony, the applicant admitted the first two Specifications. Accordingly, the Board finds that Specifications 1 and 2 have been proven. The language of Specifications 1 and 2 reproduced above under the Findings Background is adopted by the Board as its specific findings of fact.

As to proven Specification 1, the Board finds that it is, standing alone, disqualifying for admission to the Florida Bar. As to proven Specification 2, the board finds that it is, standing alone, disqualifying for admission to the Florida Bar.

Specification 3 addresses the applicant's disbarment in Florida in 1987 based on his felony convictions (see Specification 2) and related removal from judicial office (see Specification 1). In his Answer and during the formal hearing, the applicant admitted that his disbarment was based on his felony convictions, but denied that it was based on his removal from judicial office. The Supreme Court, however, after noting the applicant's removal from office

and subsequent convictions for perjury, disbarred the applicant because of the "nature of [his] actions," demonstrating that the Court considered the circumstances underlying both his felony convictions and his removal from office. The Florida Bar v. Leon, 510 So. 2d 873 (Fla. 1987). The Board finds that the facts giving rise to the disqualification from office and the felony convictions are sufficiently indistinguishable, that the applicant was on notice of the substance of the allegations and that they are proven. The Board further finds that this disbarment and its underlying circumstances standing alone disqualify him for admission to The Florida Bar.

Specification 4 addressed the applicant's continued dishonesty about his removal from judicial office and his felony convictions. In his Answer and during the formal hearing, the applicant denied the allegations in Specification 4 and in fact essentially denied the factual underpinnings of Specifications 1, 2, and 3. Actual evidence of the matters giving rise to the removal, criminal convictions and disbarment was not presented at the formal hearing. Therefore, based on the record before it, the Board finds that the

evidence is insufficient to support the allegations of Specification 4 and it is not proven.

During the formal hearing, the applicant urged the Board to conclude that he had been rehabilitated as provided by applicable rules. He called numerous witnesses who testified to his good character and moral standing; his professional ability; his lack of malice concerning his removal, disbarment and convictions; and his desire to conduct himself in exemplary fashion in the future. The applicant offered proof of his 1000 hours of community service, followed by three or four months of paid additional work at the Department of Health and Rehabilitative Services ("HRS"); his own testimony that he proved medical assistance to the poor while he attended medical school; and his work as a paralegal as evidence of his rehabilitation. The applicant further claimed that injuries and taking care of his family, including putting his children through college, have kept him from doing other community service. The applicant has failed to offer clear and convincing evidence of his rehabilitation as required by law.

The applicant's completion of 1000 hours of community service at HRS was required as part of his criminal sentence.

Although this would constitute satisfaction of "strict compliance with the specific conditions of any . . . judicial . . . order" (see Fla. Bar Admiss. R., Art. III, §4.e.(1)), no evidence exists that he contributed a single additional hour of voluntary community service to the HRS. Simply stated, had the applicant not performed the 1,000 hours of work at HRS he would have exposed himself to a probation violation and potential prison sentence.

The applicant's subsequent work at HRS and as a paralegal was paid, not voluntary. As to the applicant's medical assistance to the poor, no evidence exists, through independent testimony or documentation, that would verify this work was more than that required of all medical students as part of the medical school curriculum. Finally, the applicant did not present any evidence showing the type and extent of his injuries that allegedly prevented him from performing community service. The length of time the applicant has had to perform affirmative steps showing rehabilitation is significant.

Without such evidence, the applicant has not presented sufficient positive actions indicating that he has undertaken a useful and constructive place in society or that he has provided service to

his community. Such community service is an implied obligation of members of the bar and, thus, those seeking admission to the bar. See **Fla. Bar Admiss. R., Art. III, §4.e(7).** Such positive actions and community service are particularly imperative in the applicant's case given the egregious nature of his misconduct and the position of highest trust that he betrayed as a judge and as a member of The Florida Bar. Instead, the applicant has merely shown that he is now living as and doing those things he should have done throughout life, such as complying with the terms of his sentence, working and supporting his family. See Fla. Bar Admiss. R., Art. III, §4.e(7).

Upon consideration of the applicant's Answer, the exhibits introduced at the formal hearing, and the formal hearing testimony, the Board finds that Specifications 1, 2 and 3 are conclusively proven. The Board further finds that the applicant's evidence fails to mitigate the seriousness of any of the proven allegations. Rarely is this board confronted with conclusive evidence of moral turpitude rising to the level of egregiousness as exists on this record, and the level of proof reasonably demanded to establish rehabilitation is lacking.

The Board finds that the applicant's formal hearing presentation completely failed to establish satisfactory rehabilitation by clear and convincing evidence as required by **Fla. Bar Admiss. R., Art. III, §4.e(7).**

CONCLUSIONS OF LAW

Based upon the findings set forth above, the Board concludes that the proven allegations of Specifications 1, 2 and 3 are individually and collectively disqualifying for admission to the Florida Bar. Such proven allegations establish that the applicant, while a circuit judge and a member of The Florida Bar, engaged in egregious misconduct for which the applicant was found, beyond a reasonable doubt, guilty of perjury. This conviction for a crime of the highest moral turpitude was reviewed and upheld on appeal. Leon v. State of Florida, 474 So. 2d 832 (Fla. 2d DCA 1985).

Given those circumstances, the applicant appeared before the Board with the difficult burden of demonstrating his character and fitness for returning to the Bar. In reaching its conclusion as to the applicant's current character and fitness to return to the practice of

law, the Board is guided by the following factors contained in Fla. Bar Admiss. R., Art. III, §2.c:

(1) the applicant's age at the time of the conduct;
(2) the reliability of the information concerning the conduct;
(3) the reliability of the information concerning the conduct;
(4) the seriousness of the conduct;
(5) the factors underlying the conduct;
(6) the cumulative effect of the conduct or information;
(7) the evidence of rehabilitation;
(8) the applicant's positive social contributions since the conduct;
(9) the applicant's candor in the admissions process;
(10) the materiality of any omissions or misrepresentations.

In applying the above-listed factors to the applicant's case, the Board observes that the applicant was 48 years of age, had been an attorney for over 15 years, and a judge for at least four years at the time of his misconduct. Despite his age, experience, and the high standards expected of one holding the position of Circuit Judge, the applicant abused his position through his misconduct outlined above in the Findings of Fact. Moreover, he then compounded this misconduct through false statements and perjury. The seriousness of such behavior by one who has taken an oath to uphold the law is uncontested.

Given the seriousness of the applicant's misconduct, he was required to produce clear and convincing evidence of his rehabilitation. As noted above in the Findings of Fact, although the applicant claims rehabilitation, he failed to offer satisfactory evidence of it. The especially outrageous nature of the applicant's crime and the position of absolute trust that the applicant betrayed as a judge and as a member of The Florida Bar demand proof of such rehabilitation. The Board concludes that the applicant totally failed in this respect.

It is, therefore, the conclusion of the Board that the evidence before it as set forth in the foregoing Findings clearly and unequivocally establishes that the applicant fails to meet the standards of conduct and fitness required under the provisions of Fla. Bar Admiss. R., Art. III, §2.

RECOMMENDATION

WHEREFORE, the Board recommends that Richard Edward Leon, Sr. not be admitted to The Florida Bar under the provisions of Article VII of the Rules of the Supreme court of Florida Relating to Admissions to the Bar.

DATED this 30th day of September, 1994.

Kathryn E. Ressel
Deputy Executive Director
Florida Board of Bar Examiners

Original: Michael L. Kinney, Attorney for Applicant

CERTIFIED MAIL NO.: Z 751 816 477
RETURN RECEIPT REQUESTED

Copy: Henry M. Coxe, III, Board's Attorney

DOCUMENT 5

Response in Opposition to

Corrected Petition for Review

IN THE SUPREME COURT OF FLORIDA

FLORIDA BOARD OF BAR EXAMINERS

RE: R.E.L.) CASE NO: 84,786
)
) CONFIDENTIAL

RESPONSE IN OPPOSITION TO CORRECTED PETITION FOR REVIEW

Submitted by:

THE FLORIDA BOARD OF BAR EXAMINERS
L. KINDER CANNON III, CHAIRMAN

Kathryn E. Ressell
Executive Director

Henry M. Coxe, III, Esquire
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TABLE OF CONTENTS

TABLE OF CITATIONS ii

RESPONSE TO PETITION FOR REVIEW 1

PRELIMINARY STATEMENT 1

JURISDICTION 1

STATEMENT OF THE CASE 1

STATEMENT OF THE FACTS 2

SUMMARY OF THE ARGUMENT 5

ARGUMENT 6

CONCLUSION 11

CERTIFICATE OF SERVICE 13

TABLE OF CITATIONS

Citations

Application of Matthews, 462 A.2d 165, 176 (N.J. 1983 7

Florida Bar Examiners re D.M.J., 586 So.2d 1049, 1050 (Fla. 1991) 8

In re Green, 464 A.2d 881 (Del. 1983) 11

The Fla. Bar v. Fine, 607 So. 2d 416 (Fla, 1992) 11

The Florida Bar v. Rood, 622 So.2d at 977-78 (Fla. 1993) at 977-78 11

Rules

Rules of the Supreme Court Relating to Admissions to the Bar:

Fla. Bar Admiss. R., Art. III, B., §2.b 10
Fla. Bar Admiss. R, Art. III, §4.3 7,8

RESPONSE TO PETITION FOR REVIEW

The Florida Board of Bar Examiners, by and through its undersigned counsel, files its Response to the Corrected Petition for Review filed on behalf of the applicant Richard Edward Leon, Sr. ("Leon").

PRELIMINARY STATEMENT

The Board will use the following citations:

"BE" references the Board's Exhibits offered into evidence at the applicant's July 15, 1994 formal hearing.

"FF" references the Board's Findings of Fact and Conclusions of Law dated September 30, 1994.

"FHT" references the transcript of the applicant's July 15, 1994 formal hearing.

"SP" references the Specifications served on the applicant.

JURISDICTION

The Board acknowledges that the Court has jurisdiction of this matter pursuant to Article III, Section 4.b. of the Rules of the Supreme Court of Florida Relating to Admissions to the Bar.

STATEMENT OF THE CASE

The applicant filed his application for Admissions to the Florida Bar on June 12, 1992. He successfully completed the July 1992 General Bar Examination and the November 1992 Multi-State Professional Responsibility Exam.

The applicant was invited to appear before the Board for an investigative hearing, and he did so, on June 18, 1993. Following this hearing, the applicant was served with Specifications on September 3, 1993 so that the matter of his character and fitness could be considered at a formal hearing. The applicant filed a response to the Specifications on October 12, 1993 and a formal hearing was convened on July 15, 1994 in Tampa, Florida.

On September 30, 1994, the Board submitted its Findings of Fact and Conclusions of Law recommending that the applicant be denied admission to the Florida Bar.

STATEMENT OF THE FACTS

The Board accepts the Statement of Facts as presented by Leon with the following additions and clarifications.

While serving as a Florida circuit court judge and as a member of The Florida Bar, Leon was adjudicated guilty by the Judicial Qualifications Commission ("JQC") on the following four counts:

> (1) Improperly participating in ex parte communications with Circuit Judge Arden Mays Merckle about the criminal cases of Alisa Dean Avery; improperly securing the alteration of a sentence imposed on the

> defendant Avery; improperly engaging in repeated ex parte communications with the State Attorney's Office about the disposition of the Avery case; and improperly fraternizing with the defendant Avery's father while his daughter's case was pending before the Criminal Justice Division of the Circuit Court for the Thirteenth Judicial Circuit on which the applicant sat.
>
> (2) Engaging in the sale of land to the defendant Avery's father when the defendant's cases were pending before the court on which he sat.
>
> (3) Conspiring with Judge Merckle to deny their ex parte communications, and then implementing this scheme by denying the same in response to inquiries by the press and by a JQC investigator.
>
> (4) Falsely stating on two occasions to a JQC investigator that the applicant had not had contact with the defendant Avery's father the day of her sentencing; falsely stating under oath that the statements given to the JQC investigator were true; falsely stating under oath that his ex parte communications with Judge Merckle the day of the sentencing were the result of the applicant having seen the defendant being fingerprinted, when actually they resulted from his contact with the defendant's father.

(SP Exhibit "A"). The JQC's findings, conclusions and recommendation of removal were reviewed and upheld by this Court. (BE No. 7).

Leon was subsequently indicted on two counts of perjury, one count of official misconduct, one count of bribery and one count of unlawful compensation. (SPE Exhibit "B"). He was convicted

of the first three counts with the official misconduct conviction being reversed on appeal.

During the formal hearing, Leon urged the Board to conclude that the had been rehabilitated as provided by applicable rules. As evidence of his rehabilitation he offered the following:

(1) His 1000 hours of community services at the Department of Health and Rehabilitative Services ("HRS"). (FHT at 173).

(2) His three or four months of additional work at HRS. (FHT at 174).

(3) His work as a paralegal. (FHT at 181).

(4)His uncorroborated testimony that he provided emergency room service, clinic service, and medical assistance to the indigent while he attended medical school. (FHT at 207-208).

(5) Raising his family. (FHT at 239).

The applicant further claimed, without independent verification, that injuries and taking care of his family, including putting his children through college, have kept him from doing other community service. (FHT at 181 and 204).

The 1,000 hours of community service performed at HRS was not work voluntarily performed, but was in fact a condition of the applicant's felony probation. As for additional work performed for HRS beyond that required by his sentence, the applicant was compensation in full for the work. Consequently, there existed no documented evidence at the formal hearing that the applicant voluntarily performed any community service during the entire ten year period since his disbarment.

The Board recommended against Leon's admission to the Bar and also noted that "[r]arely is the Board confronted with conclusive evidence of moral turpitude rising to the level of egregiousness as exists in this record, and the level of proof reasonably demanded to establish rehabilitation is lacking." (FF at 11).

SUMMARY OF THE ARGUMENT

It is undisputed that Leon, while a circuit court judge and a member of the Florida Bar, was found guilty of, among other misconduct, perjury - a crime of the highest moral turpitude. Given this conviction for such an egregious crime, which was an absolute betrayal of his position as a judge and an attorney, Leon

had the heavy burden of showing rehabilitation. Given the opportunity to present evidence of such rehabilitation, Leon failed to do so.

ARGUMENT

It is undisputed that the applicant, as a judge and member of the Florida Bar, was (1) found guilty by the Judicial Qualifications Committee ("JQC") of, among other things, lying under oath, (2) recommended for removal by the JQC and subsequently removed from office by this Honorable Court, (3) tried and convicted of two counts of perjury, and, finally, (4) disbarred by this Honorable Court. Each of these items was addressed in Specifications 1 through 3 and was admitted by the applicant in his Amended Answer and Affirmative Defenses to Specifications.

Given this egregious and disqualifying misconduct, the applicant appeared before the Board at his formal hearing with the heavy burden of establishing his rehabilitation. As noted by one court, the showing of rehabilitation is not an easy burden.

> A fundamental rule in bar admission cases is that evidence of reform and rehabilitation is relevant to the assessment of an applicant's moral character. Rehabili-

> tation is pertinent because the Court is interested in an applicant's present fitness to practice law. Where evidence convincingly demonstrates reform and rehabilitation, it can overcome the adverse inference of unfitness arising from past misconduct and, if persuasive, present fitness may be found.
>
> An applicant's attitude and behavior subsequent to disqualifying misconduct must demonstrate a reformation of character so convincingly that it is proper to allow admission to a profession whose members must stand free from all suspicion. The more serious the misconduct, the greater the showing of rehabilitation that will be required. In certain instances, evidence of a positive kind including affirmative acts demonstrating personal reform and improvement will be required in order to establish the requisite degree of rehabilitation. However, it must be recognized that in the case of extremely damning past misconduct, a showing of rehabilitation may be virtually impossible to make. In all cases, the need to ensure the legitimacy of the judicial process remains paramount.

Application of Matthews, 462 A.2d 165, 176 (N.J. 1983) (citations omitted).

This Court adheres to this same difficult burden and requires that rehabilitation be established by clear and convincing evidence including, but not limited to, the following elements:

> (1) Strict compliance with the specific conditions of any . . . judicial . . . order;
>
> (2) Unimpeachable character and moral standing in the community;
>
> (3) Good reputation for professional ability;

> (4) Lack of malice and ill feeling toward those who by duty were compelled to bring about the disciplinary, judicial or administrative proceeding;
>
> (5) Personal assurances, supported by corroborating evidence, of a desire and intention to conduct one's self in an exemplary fashion in the future;
>
> (7) Positive actions showing rehabilitation by such things as a person's occupation, religion, community or civic service. **Merely showing that an individual is now living as and doing those things he or she should have done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society. The requirement of positive action is appropriate for applicants for admission to the bar because service to one's community is an implied obligation of members of the bar.**

Fla. Bar Admiss. R, Art. III, §4.e. (emphasis supplied).

Moreover, in making its determination, the board is to weigh the nature and seriousness of the offense against the evidence of rehabilitation. Florida Bar Examiners re D.M.J., 586 So.2d 1049, 1050 (Fla. 1991).[1]

In the case at hand, Leon is guilty of such acts as perjury, conspiring to lie, lying to a JQC investigator, improper alteration of a sentence, improper ex parte communications, and improper fraternization with the defendant's father. These acts, which ultimately led to his removal from judicial office and disbarment,

clearly rise to the level of moral turpitude and constitute an absolute betrayal of his position as a judge and lawyer. Thus, Leon had the burden of showing evidence of rehabilitation that could offset such egregious misconduct. That is, he needed to provide evidence of positive actions that would show he was undertaken a useful and constructive place in society. As discussed below, there was a dearth of such positive actions.

Much of what Leon claimed as specific evidence of rehabilitation - raising a family and working as a paralegal or a paid HRS employee -0 is "merely showing" that he "is now living as and doing those things that he . .. should have done throughout life." Fla. Bar Admiss. R, Art. III, §4.e.

---

[1] The applicant's argument that his rehabilitation was contingent upon his acknowledgement of guilt is without merit. A review of the Findings of Fact reveals that no such acknowledgement was required by the Board or entered into its determination of rehabilitation. Moreover, such a requirement would be inconsistent with the Board's finding that Specification 4, which alleged the applicant's continued dishonesty about his removal from judicial office and his felony convictions, was unproven. (FF at 9).

Similarly, his 1000 hours of community service was a part of his criminal sentence that he had to do or else be exposed to a probation violation and possible prison sentence. Therefore, none of these claims can constitute positive actions demonstrating that Leon has undertaken a useful and constructive place in society.

The only action that even begins to address the level of positive action contemplated by the rule at issue is Leon's alleged voluntary services while in medical school. Leon, however, failed to offer any independent testimony or documentation to support this claim. Similarly, Leon failed to offer any evidence to support his claim that injuries prevented him from doing more community service. Rehabilitation is not aspirational; it requires proof.

The applicant did offer the testimony, affidavits, and letters of several character witnesses who discussed such matters as the applicant's good reputation in the community, his competency as a lawyer, his lack of malice, and his desire to conduct himself in an exemplary fashion in the future. These attributes are, however, "things" that Leon "should have done throughout life" that, "although necessary to prove rehabilitation," do not show that Leon has undertaken a useful and constructive place in society.

Furthermore, none of the witnesses offered any evidence supporting the applicant's claims about his medical service or the injuries that prevented him from providing more positive actions. In fact, when one of the witnesses, Dr. Rudy Mayoz (the applicant's son-in-law), was questioned as to why the applicant went to medical school, helping others was not one of the reasons given. Instead he answered, "primarily because there wasn't very much else that [the applicant] could do as a professional." (FHT at 124). Moreover, of the three medical professionals who testified on the applicant's behalf, only one discussed the applicant's claimed injuries and that was merely to say that the applicant "... had a little problems (sic) with his low back." (FHT at 157, emphasis supplied).

The Board has the primary duty to assure the protection of the public and safeguard the justice system. Fla. Bar Admiss. R., Art. III, B., §2.b. The egregious nature of the applicant's crimes of moral turpitude and the position of highest trust that he betrayed as a judge and as a member of the Florida Bar go straight to the heart of this justice system. Given the opportunity to convince the Board of his rehabilitation - that he should be allowed into a profession

whose members must stand free from all suspicion - Leon simply failed.

The applicant is required to present clear and convincing proof of rehabilitation upon petition for readmission after disbarment for matters of moral turpitude. He has had ten (10) years in which to establish that he has done more than what society demands of all persons, especially those licensed to practice law. Nevertheless the applicant offered no credible evidence that he has ever taken affirmative steps beyond the norm from which the board could conclude that he is either rehabilitated or now appreciates the demands encompassed by the concept of rehabilitation.

In issues of this nature involving the resolution of a factual dispute, the Board submits that the decision of the Supreme Court of Delaware in In re Green, 464 A.2d 881 (Del. 1983) is particularly applicable:

> The Board is an important arm of the court, composed of experienced and able members of the Delaware Bar. Provided their findings are supported by substantial evidence and are the product of any orderly and logical deductive process, we accept them. Where, as here, the determination of facts turns on a questions of credibility and the acceptance or rejection of "live" testimony before the board, this Court, in the exercise of judicial restraint, must affirm.

Id. at 886 (citations omitted). "The referee is the person most well-equipped to judge the character and demeanor of the lawyer being disciplined. The Fla. Bar v. Fine, 607 So.2d 416 (Fla, 1992). The referee was clearly convinced that Rood's testimony was not credible, and we are not at liberty to substitute our judgment for that of the finder of fact." The Florida Bar v. Rood 622 So.2d at 977-78 (Fla. 1993). The Board's findings as to the applicants rehabilitation are the product of an orderly and logical deductive process and should, therefore, be affirmed.

CONCLUSION

It is evident from the Board's findings, conclusions and recommendation that the Board thoroughly and fairly evaluated the record before it including the applicant's evidence of rehabilitation. The Board properly found that such evidence was insufficient when weighed against the nature and seriousness of the applicant's past misconduct.

WHEREFORE, the board respectfully submits that the applicant has failed to establish his rehabilitation by clear and convincing evidence. The Board's findings should be approved by

the Court and the Board's recommendation that the applicant not be admitted to the Florida Bar at this time should be affirmed.

DATED this 4th day of January, 1995.

Respectfully submitted,

FLORIDA BOARD OF BAR EXAMINERS
L. KINDER CANNON III, CHAIRMAN

Kathryn E. Ressell
Executive Director

By: /s/ Henry M. Coxe, III
Henry M. Coxe, III Esquire
Law Offices of Henry M. Coxe, III
424 East Monroe Street
Jacksonville, Florida 32202
(904) 356-2389
Florida Bar #0155193

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response has been served by U.S. Mail this 4th day of January, 1995 to Michael L. Kinney, Esquire, Kinney, Fernandez & Boire, P.A., P.O. Box 18055, Tampa, Florida 33679-8055.

/s/ Henry M. Coxe, III
Attorney

DOCUMENT 6

Motion for Rehearing

IN THE SUPREME COURT OF FLORIDA

IN RE: THE APPLICATION OF	)	CASE NO: 84,786
	)	
RICHARD E. LEON,	)	CONFIDENTIAL

MOTION FOR REHEARING

This Motion for Rehearing is submitted pursuant to Rule 9.330, Fla.R.App.P., and challenges, in a constitutional context, the Findings of Fact and Conclusions of Law (Findings and Conclusion) of the Florida Board of Bar Examiners (The Board).

In Baird v. Arizona, 401 U.S. 1, 27 L.Ed 2d 639, 91 S.Ct. 702 (1971), the United States Supreme Court announced, as a general proposition, that:

> The practice of law is not a matter of grace, but of right for one who is qualified by his learning and his moral character. See Schware v Board of Bar Examiners, supra, and Ex parte Garland, 4 Wall 333, 18 L.Ed 366 (1867).

It s urged for this Court's consideration that The Board lapsed into a subjectively based reasoning process which ignored the clear and convincing evidence of rehabilitation and moral fitness which,

under a proper constitutionally objective analysis, could only have resulted in a favorable recommendation.

As an example, much was made of the failure of the Applicant to prove volunteer community service. On page 10 of the Findings and Conclusions is the following:

> As to the Applicant's medical assistance to the poor, no evidence exists, through independent testimony or documentation, that would verify this work was more than that required of all medical students as part of the medical school curriculum.

Simply stated, The Board rejected the straight forward, sworn, first hand testimony of the Applicant, subject to cross-examination, which was neither inherently improbable nor in any way impeached despite the opportunity presented to The Board's skilled attorneys. The only explanation of the rejection is that The Board considered the Applicant dishonest. It follows that Specification 4, brought by the Board, asserting continuing dishonest, still lurked in the mind of The Board. The Fact that the continuing dishonest charged with dismissed (apparently at the election of The Board since proof of the continuing denial of guilt was susceptible of easy proof) is further evidence of a subjective approach.

Such subjective reasoning violated the Applicant's Constitutional right under the Fourteenth Amendment to the Constitution of the United States to be treated equally with other applicants and lawyers and to have a fair tribunal.

To merely hear and not apply proofs validly before it, resulted in a denial of due process by The Board. The United States Supreme Court in Washington ex rel Oregon R. & N. Co. v. Fairchild, 23 U.S. 510, 56 L.Ed. 863, 32 S.Ct. 535 (1912) set out the requirements of a fair tribunal. This case involved a ruling of a state railroad commission resulting from the asserted hearing held in violation of due process.

The Court, in reversing, stated:

> The carrier must have the right to secure and present evidence material to the issue under investigation. It must be given the opportunity by proof and argument to controvert the claim asserted against it before a tribunal bound not only to listen, but to give legal effect to what has been established.
>
> (Emphasis supplied)

This principle was violated by The Board.

In the Petition for Review (page 10), we alluded to the proverbial catch 22 with which Applicant was faced on now note

in passing that this Court used the same term in over-turning the Board's recommendation of non-admission in the case of Florida Board of Bar Examiners re M.C.A., 650 So.2d 34 (Fla. 1995).

Perhaps anticipating this Court's recognition of the catch 22 situation, The Board elected not to pursue Specification 4 but rejected perfectly competent testimony on legally untenable grounds that the testimony of Applicant was not independent and thus not credible. Only a presumption of dishonesty could produce that result.

Such an approach as a matter of principle has been condemned. In Staub v. Baxley, 355 U.S. 313, 2 L.Ed. 2d 302 78 S.Ct. 277 (1958), Supreme Court review was sought from a conviction and Appellate affirmance thereof in the State Court's of Georgia.

The conviction was for an ordinance violation which appellant claimed violated First Amendment rights but her claim was rejected. On appeal to the United States Supreme Court, the City of Baxley argued that there was no Federal jurisdiction to review the case because the affirmance of the conviction rested upon adequate nonFederal grounds.

The Supreme Court rejected that argument stating:

> It therefor is within our provence to inquire not only whether the right was denied in express terms, but also whether it was denied in substance and effect, as by putting forward non-Federal grounds of decision that were without any fair or substantial support . . . (for) if non-Federal grounds, plainly untenable, may be thus put forward successfully, our power to review easily may be avoided.
>
> (Emphasis supplied)

The Board's reasoning and foundation for its conclusion is untenable.

It further appears, in the face of a full pardon, The Board unwittingly undertook to continue to punish Applicant for past, but fully atoned and pardoned misdeeds in violation of the dictates, or at least the spirit, of the Fifth Amendment applied to the States through the Fourteenth Amendment.

Lastly, we ask the Court to judicially notice that U.S. Representative Alcee Hastings if presently practicing law in this state after being removed from the Federal bench under circumstances similar to Applicants, and that recently this Court suspended U. S. Representative Larry Smith for three years from the practice of law based on convictions of income tax evasions and making false

statements to a Federal elections committee See: The Florida Bar v. Smith, 650 So.2d 980 (Fla. 1995).

Viewed in an objectively reasonable perspective, the evidence is clear and convincing that the Applicant is rehabilitated and morally qualified to be admitted to the practice of law in the State of Florida.

Respectfully submitted,

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DOCUMENT 7

Excerpts from Transcript

Testimony of Honorable Frank D. Alvarez
Pages 18-38

MR. MILLER: Do you want to call your first witness?

MR. MILLER: Good morning, sir. Will you be sworn in?

HONORABLE FRANK D. ALVAREZ,

the witness herein, being first duly sworn on oath, was questioned and testified as follows:

MR. MILLER: State you name for the record, please.

THE WITNESS: Frank Dennis Alvarez, A-l-v-a-r-e-z.

MR. MILLER: Mr. Brown?

MR. BROWN: Mr. Kinney is going to conduct the examination.

BY MR. KINNEY:

Q. What is your profession.

A. I'm a lawyer by profession. My employment occupation now is a circuit judge in the 13th Judicial Circuit.

Q. And how long have you been a circuit judge?

A. Have been a circuit judge since January 7th, 1985.

Q. And are you the chief --

A. I presently serve as the Chief Judge for the 13th Judicial Circuit.

Q. And how long have you held that position?

A. Since August 1, 1988.

Q. Do you know the Applicant in this case, Richard Leon?

A. Yes, I do.

Q. And how long have you known Mr. Leon?

A. I've known Dickie I would say 15, 20 years.

Q. And in what capacity have you known him, socially or businesswise?

A. I met Dick socially years ago. I got to know him better when I became a county judge back in 1981.

Q. Do you have an opinion as to Mr. Leon's reputation in the community obtained in Hillsborough County for honesty, truthfulness, ethics and good character?

A. Yes, I do.

Q. And what is that opinion?

A. That opinion is good.

Q. In your opinion, has Mr. Leon accepted the legal consequences of his conviction?

A. The times I've talked to Dickie since all the problem, he accepted the jury verdict. I think Dickie from day one has always

maintained his innocence. He felt strongly about that. But he accepted what had happened to him. And accepted the punishment. And completed it, and completed it well, as I understand.

Q. Would you recommend Mr. Leon for admission to the Florida Bar?

A. I would.

Q. Is there anything you would like to add with regard to his character or ethics?

A. Well, strangely when all this was going on as to the basis of my testimony reference to his character being good, all the people you talked to, whether it was lawyers or people in the community or other judges, everybody was quite shocked as to the charges. A lot of the people felt like Dick did with reference to the outcome of the trial. I've spoken to Dick very very little, you know, since his conviction. But the last time, I think the first time I saw him he appeared as a, in a case in front of me as a guardian, I believe, for this mother, who was being adjudicated incapacitated. And that's the first time I think I had seen Dick since he had completed medical school. But everything that he was asked to do,

his terms and conditions of probation, he completed and completed them well. I think that Dick would serve as a good lawyer.

MR. KINNEY: Thank you, Judge.

MR. MILLER: Mr. Coxe?

BY MR. COXE:

Q. Judge, I am Hank Coxe from Jacksonville. Am I correct that you've not discussed with Mr. Leon the facts surrounding the case in 1982?

A. I didn't testify at Dick's trial against Arden Merckle, which is entirely two sets of facts. But, you know, there were discussions back then that probably I had with Dick with reference to to the case and so forth. But, then after the conviction I would run into Dick, and we would talk about what he was doing. I understand when he went to medical school, and then he came back, I had seen him. Those are general type conversations. But basically a detailed conversation with him in reference to his problems, no. And even more, Mr. Coxe, when he advised me some time back if I would be a witness that this hearing, basically I didn't want to talk to him about anything that I may have to

answer. So that's basically the extent of the conversation I've had with Dick concerning this.

Q. Can I ask you in what capacity you testified at Mr. Merckle's trial, what issue?

A. Just basically as to the talking about the assignment or reassignment of cases, the duties of a chief judge. The chief judge I believe had the authority to reassign cases to himself under the Administrative Code, the Rules of Judicial Administration.

Q. You mentioned, you characterized, Your Honor, a number of people were shocked as I understand, shocked at the result that he was found guilty, is that fair to say?

A. That was the general feeling back then, Mr. Coxe, to be totally honest with you, of the majority of the people in the courthouse.

Q. You have handled a fair number of cases over the years?

A. Yes.

Q. And you have handled a fair amount of cases that have had media attention?

A. Very much so.

Q. Have you experienced a number of cases where the general understanding of the media account of what's going on is not actually what you're seeing there in front of the bench?

A. That's correct. Very correct.

Q. Would you agree that perjury is as egregious a crime of moral turpitude as there can be?

A. Yes, sir.

MR. COXE: I don't have anything else, Mr. Chairman.

BY MR. KINNEY:

Q. At the time of these proceedings, what was the position of Judge Merckle at that time?

A. At the time all this was going on Judge Merckle was the chief judge of the circuit.

Q. Was he also at that time a member of the JQC?

A. I don't know if he was a member at that time or just getting off. But I don't know during that time. He had been a member of the JQC. I'm not sure if he was off yet or his term was beginning or finishing. But I know he was a member of the JQC during that time period.

MR. KINNEY: Thank you.

MR. MILLER: Ms. Schneider?

BY MS. SCHNEIDER:

Q. I have one question, Your Honor. As a public member, can you explain to me how an individual could be convicted of the crime of perjury and not be guilty of it?

A. Well, in our system, just because you're convicted, all right, does not necessarily mean that you have committed the crime. It's based on the evidence that's admitted. As I understand the facts in this case, the perjury count that he was convicted of were statements that he made to Tom McDonald. And at some point later there was an attempt to explain or recant or whatever. I think once the statements were made to McDonald, I think Dick Leon felt one way, and the facts that Tom McDonald had been told or knew were different. And he went to trial and was convicted of the perjury charges dealing with statements made to the JQC investigator. But, you know --

Q. Excuse me. But that was not hearsay?

A. No, because I think, as I understand it, that's what he was convicted of, the perjury count, was statements made to the JQC investigator. And at that point in time Tom McDonald, since

he was going to be a witness, recused himself from the JQC proceedings. But during that time we would talk. I knew Mr. Mitcham, who was his lawyer. I would hear things. And again, this is an administrative hearing, but they were given polygraph examinations and so forth, which as I understand it at the time were positive for Mr. Leon. But everything else that he had been tried on, basically I believe he was acquitted. And the one case was thrown out by the 2nd District Court of Appeals.

I just thought that overall, Mr. Coxe, I think because we're going back to '82, '83, the way things were occurring in Hillsborough Count at the time, you had two judges who had been charged. You had three commissioners who had been indicted. I mean, the media was frenzied. They reminded me like the situation that's going on in L. A. I mean, every day, every day, every day had something going on. And I think just by reading, there was a lot of stuff that came out that was not, you know, was just not happening. And I think all that probably might have determined as to whether any and all charges would have been filed, where maybe one or two charges may have been filed. But with all the media hype and all the, quote, corruption that was

going on in Hillsborough County at the time, the appointed state attorney at that time just decided to file as many possible charges as possible. It was an electric time in Hillsborough County during '82, '83, '84.

But as far as, as long as I've known Dick, and we've discussed this back then, he has always, always maintained his innocence. And I've known him. Like I said, even though he was convicted, and I believe in the jury system, a jury of six people found that he committed perjury. And I think he was placed on probation. And I think he's rehabilitated himself. And in a position like me, being a judge, I think that's what you try to find, that a person has rehabilitated himself, and can offer something to society. And that's why I think the last 10, 11, 12 years he may be able to offer something back to the legal community. That's why I'm here testifying on his behalf. If I felt he couldn't, I would be honest with you and tell you, he shouldn't be allowed to practice law. But I don't feel that way.

Q. So you believe in the jury system. Do you also believe that Mr. Leon Is innocent? Do you believe -- you say he maintained his innocence.

A. I believe in the jury system. I believe a jury convicted him, and that's it. If I was Mr. Leon, and I felt I was innocent, notwithstanding what a jury said, then I would have to abide by my own personal beliefs. But I'm a firm believer in the jury system.

MS. SCHNEIDER: Thank you.

MR. MILLER: Mr. Yates?

BY MR. YATES:

Q. Wasn't there a prosecutor called Merkel in Tampa?

A. Yes. Bob Merkel.

MR. MILLER: That's Mad Merkel, right?

THE WITNESS: Right. Mad dog. Right.

MR. YATES: That's all.

MR. MILLER: Mr. O'Neill?

MR. O'NEILL: No questions.

MR. MILLER: Mr. Cassel?

BY MR. CASSEL:

Q. Judge, are you testifying under a subpoena this morning?

A. Yes. Yes. If I can add to that, Mr. Cassel, the $12.50 that I was given, that's being donated to my guardian ad litem

program. Okay? Since I had to except [sic] payment, I figured I would donate it to one of our programs that needs money.

MR. CASSEL: Good purpose.

THE WITNESS: Thank you.

MR. MILLER: Mr. Kinney?

BY MR. KINNEY:

q. Did you have to be subpoenaed to come here?

A. Yes. Under the law I had to be subpoenaed, as a sitting judge. That's required by the judicial code of conduct. We cannot testify voluntarily unless we are witnesses to the facts, you know, we're an actual witness.

MR. CASSEL: That's why I asked the question.

THE WITNESS: Thank you. I appreciate it.

BY MR. MILLER:

Q. Your Honor?

A. Yes, sir.

Q. What was the standard proof required for the finding of perjury by the jury against the Respondent?

A. In the criminal case it's beyond a reasonable doubt.

Q. So, what you're saying is those jurors found that there was enough evidence to convict on a standard of beyond a reasonable doubt?

A. Correct. Yes.

MR. MILLER: Thank you.

MR. BROWN: Can I ask one question?

MR. MILLER: Yes.

BY MR. BROWN:

Q. Because you believe in the jury system, that does not extend to thinking it's infallible and it never makes a mistake?

A. Oh, no.

MR. MILLER: I didn't understand that question.

MR. BROWN: Because he believes in the jury system, his opinion doesn't extend to thinking it's infallible and it never makes mistakes.

MR. MILLER: And his response was?

THE WITNESS: No. It's not infallible. I think, if you look in the news media, things that occurred, convictions are being set aside year in and year out, cases that were 10, 12, 15 years old. There w as a murder case that I prosecuted that the

gentleman received the death penalty and he was on death row for about 15 years. And the testimony that we relied upon, the individual came back and recanted his story, again, 15 years later. I'm not happy that it took so long on death penalty cases, but in this instance had that not happened we might have executed an innocent person. But again, it took 15 years to find the fact that a person we convicted was indeed innocent. So, the jury system is not 100 percent. But I believe in it. The jury spoke, and he was convicted. That's the way I look at it.

MR CASSEL: I have another question.

BY MR. CASSEL:

Q. Judge, do you know if the conviction of perjury was appealed?

A. About a couple of weeks ago I pulled all the cases in reference to Mr. Leon and Mr. Merckle. And apparently it was appealed to the 2nd District Court of Appeals. And they upheld the two perjury convictions. And throughout the official misconduct, I believe, dealing with the third conviction as being unconstitutional. If it went any further, I couldn't find it. I know it went to the 2nd District Court of Appeal, and they confirmed the

convictions. But I don't know if it went to the Florida Supreme Court.

BY MR. COXE:

Q. Judge Alvarez, following your review of the recorded convictions, let me ask if you have any knowledge of talking to Mr. Leon of this subject. This is from page 1269. It says the record reflects that Judge Leon did not recant until after discovering that Judge Merckle was recanting. Do you have any knowledge of that subject?

A. No. I understand that came up as an issue back then. And I was trying to remember as much as possible. I never talked to -- again, once I was advised that I would possibly be a witness, I thought it would be better if I came to the testify without discussing anymore of the facts with Dick. But I remember back then that was the big issue on recanting, whether he recanted before Merckle talked to Tom McDonald and recanted his story. So, it was a big confusion back then. And I think back then I think it probably became a matter of an issue for the jury to decide. And I think, if I'm not mistaken, probably that was the main issue, if

there was a recantation, and if it was prior to Merckle or after Merckle. But I know it was an issue back then.

Q. But putting aside the general concept of the jury verdict versus the personal belief in one's own innocence, is it your understanding that it is absolutely true that Mr. Leon lied to Mr. McDonald about whether he had talked to Mr. Avery?

A. Do I know if it was true?

Q. Is that in dispute, that he had talked to Mr. Avery?

A. I don't know.

Q. Is it your understanding that there is any dispute that Mr. Leon later, in fact, recanted, he, himself said, I lied to Mr. McDonald of the Judicial Qualifications Commission?

A. Whether he's guilty of perjury or not?

MR. KINNEY: Excuse me. Are you talking about whether or not he was talking to Judge Merckle or to Avery?

BY MR. COXE:

Q. I'm talking, is there any dispute as you understand it, Judge Alvarez, that Mr. Leon lied to Mr. McDonald of the Judicial Qualifications?

A. All I know is he talked to Mr. McDonald. Okay? At some point in time there he went back to talk to Mr. McDonald. All right? And then that issue about whether Merckle had changed his story had anything to do with him, I don't know. That was a big issue. But I know he had two conversations, as I recall, with Mr. McDonald.

Q. As a general concept, recantation implicitly announces the pulling back what you originally said?

A. Yes. That's what recanting is. You recanted your prior sworn testimony.

MR. COXE: I have nothing further.

BY MR. KINNEY:

Q. At the time he talked to Mr. McDonald, was he under oath?

A. I don't know. Again, at the time, Mr. Kinney, there was a lot of stuff that we were reading in the newspaper. Okay? And, you know, there was a lot of conversations that, among people that you heard this, I heard that, you know. My conversations with Dick in reference to this whole thing is that, again, he never admitted to me that he violated any law. And he's always

maintained in conversations that I had with him back then that he was innocent. He's never wavered from that position. And again, the jury convicted him. The jury spoke. I believe in the jury system. And he's convicted. And I stand by that. I have feelings for Dick. But I think professionally I'm in the position that I believe in our jury system. And like I say, it does have flaws. And maybe this is a flaw. I don't know. But it's hard for me to -- maybe for you to understand that I believe in the jury system and believe Dick was innocent. But on everything that I've known, whether personal knowledge or hearsay, I think that's a possibility that might have occurred in this case.

MR. MILLER: Mr. Stewart?

MR. STEWART: I have no questions.

MR. MILLER: Mr. O'Neill?

BY MR. O'NEILL:

Q. Judge, did the volatility of the situation that you testified about here in Tampa at the time all this occurred have any influence on the jury, in your opinion?

A. No. I don't think it would have had any effect on the jury, Mr. O'Neill. I think the influence probably would have been the filing of the charges.

Q. Did Mr. Austin, I think, handle this case out of Jacksonville, another states attorney, as I recall?

A. Yes.

Q. And that was assigned by the governor, because of the volatility of the situation?

A. That's correct. That's correct.

MR. O'NEILL: That's all.

MR. MILLER: Any further questions of this witness?

BY MR. CASSEL:

Q. Judge, because of your years of experience on the bench, would you agree that it's not unusual for a person who's charged with a criminal offense who pleads that he is not guilty, and thereafter is found guilty by a jury, for that person to continue to maintain his innocence?

A. It happens quite a bit, Mr. Cassel.

Q. In the vast majority of cases, right?

A. I don't know if I can say the vast majority of them. But I would say it's at least 50 plus one.

Q. Percent?

A. On those cases, you know, that people convicted still maintain their innocence.

Q. At least it's safe to say that it's not unusual?

A. No. No. It's not unusual at all.

MR. CASSEL: Thank you.

MR. COXE: Judge, may I ask one additional question?

BY MR. COXE:

Q. Judge, I don't quarrel with that concept, after prosecuting and doing criminal defense work. When you're on the bench as a judge, and you found someone guilty, and you have formed an opinion that someone was innocent, as you had here --

A. I would throw it out.

Q. You would what?

A. I would throw it out.

Q. If a jury finds a person guilty, and you're in a jury trial, and the jury has found the defendant guilty, and you have formed an opinion that the defendant was innocent, what would you do?

A. It would have never gotten to the jury, Mr. Coxe. If I don't think that the prosecutor has presented his case, it will never get past directed verdict of acquittal, notwithstanding the type of case it may be. I think that's my sworn duty as a judge. And I think, you know, in some cases, maybe with political overtures, do get to juries where it shouldn't, where maybe the evidence isn't there. But if you apply the standard, it has to be beyond a reasonable doubt once the government or the state has rested its case. And me, as the trier of fact, have that legal responsibility to determine if I think that the state has met its burden. And at the end of their case when they have rested, it's my responsibility, as a judge, to at that point in time grant a judgement of an acquittal if the motion is made by the defense. You see, once a jury has come back, once you let it go to a jury, then I have already formed an opinion in my mind that the state has presented sufficient evidence to get the case to a jury. All right? But if I thought in my mind that once the state rested, if there was insufficient evidence, the jury would never have that opportunity.

MR. MILLER: Mr. Coxe, may I ask a question?

BY MR. MILLER:

Q. Judge Alvarez, are you saying you have never issued a JLD [sic]?

A. Oh, I have. I have.

Q. What you're saying is, I think, in answering Mr. Coxe's question is that at certain times there has been an issue that has gotten to the jury, you have let got to the jury, and that you have formed an opinion at some point between the time it got to the jury and they made their decision where you felt that the evidence wasn't there, and you have overruled them, notwithstanding the verdict?

A. That was only after there had been a motion for new hearing and newly discovered evidence had been filed. Okay. That's the only time. I have overridden a jury one time. And that was on a case that, again, I granted a motion for rehearing, and there was new evidence that was brought that was not available at the time of the trail. And I overrode the jury verdict and granted a new trial. Okay?

MR. MILLER: Yes, sir.

THE WITNESS: But I have never sat in a case where I've let it go to the jury and let it come back and granted judgment

of acquittal, notwithstanding the jury verdict, except this one particular time. But again, I had newly discovered evidence. But I was trying to answer Mr. Coxe's question, that after the state has rested, if I felt they had not met their burden, the case would have never gotten to the jury.

BY MR. MILLER:

Q. I understand.

A. The other thing is that, yeah, I have done it one time before. But those things --

Q. That's once in how many years on the bench?

A. 14.

Q. That's a pretty good record.

A. Yeah. Newly discovered evidence. There's not too many times that I find that there was newly discovered evidence that was not available at the time of the trial, if defense had used due diligence in getting that. It was available to everybody. But in this case there it happened. But that was once in 14 years.

MR. MILLER: Mr. Coxe?

MR. COXE: I have no other questions.

MR. MILLER: Mr. Kinney?

MR. KINNEY: Nothing further.

MR. MILLER: I think you may be excused, sir.

THE WITNESS: Thank you, gentlemen.

* * *

DOCUMENT 8

Excerpts from Transcript

Testimony of Honorable Bob Anderson Mitcham
Pages 38-54

* * *

MR. MILLER: Sir, would you be sworn?

HONORABLE BOB ANDERSON MITCHAM, the witness herein, being first duly sworn on oath was questioned and testified as follows:

MR. MILLER: State you name for the record, please.

THE WITNESS: Bob Anderson Mitcham, M-i-t-c-h-a-m.

MR. MILLER: Mr. Brown?

BY MR. BROWN:

Q. What is your profession.

A. I'm a circuit judge, lawyer by trade.

Q. And how long have you been on the circuit bench?

A. I'm finishing my fourth year now. And I was admitted in 1963. I practiced 27 years before I was on the bench.

Q. Do you know the Applicant, Richard Leon?

A. Yes, sir.

Q. And how long have you known him?

A. A little more than 35 years.

Q. And in what capacity have you known him?

A. Law student, friend, business associate, trial lawyer, county judge, circuit judge.

Q. Have you ever represented him?

A. I represented him in the trial for which he's before this tribunal now. Co-counsel.

Q. Sir, so you are aware of his conviction and sentence?

A. Yes, sir.

Q. And you understand the general nature of the allegations?

A. Yes.

Q. Do you think that Mr. Leon has accepted the legal consequences of his conviction?

A. Yes.

Q. Do you think that Mr. Leon has accepted the legal consequences of his conviction?

A. Yes.

Q. Do you believe that he has no ill will or malice towards those who have prosecuted him?

A. He has no ill will.

Q. How would you describe Mr. Leon's character and moral standing?

A. He's been my friend for more than 35 years. As far as I'm concerned, his character is beyond reproach. He's been my friend all these years. And he's my friend now. His family is my friend. I had the pleasure of securing and adopting his youngest child for him. One of the finest family men that I've ever had the opportunity of knowing in my entire life, bar none.

Q. How would you describe his reputation for honesty, truthfulness, ethics and good character?

A. In the community in which I live his character is impeccable, and his truthfulness has never been questioned in the circles in which I am a part of.

Q. How would you describe his competency and ability to practice law, and his reputation as a lawyer?

A. Good lawyer. Thorough. Kind to his clients. Extremely conscientious. And considered to be a lawyer's lawyer in the area in which he worked.

Q. Are you satisfied that he would continue to conduct himself in such exemplary fashion?

A. No question in my mind about it. The answer is yes.

Q. If you are in a position to do so, I realize you are not, but if you are in a position to do so would you either hire or refer clients to him?

A. Certainly would, in both instances.

Q. In your representation of him at this trial, can you shed some light on your personal feelings of his innocence or guilt of the charges for which he was convicted?

A. This case, of course, got a lot of media attention because of former Judge Leon's position. And I was co-counsel in the case with another lawyer. I believe Mr. Johnson represented him before the JQC. And Mr. Leon told co-counsel and me what he remembered the facts to be. And we prepared our case accordingly. And he has never wavered from his position of what the facts were, and how they occurred. And in my representation of him I found him, contrary to what people say -- they say that lawyers and judges are the worst clients that you could possibly have -- but he was a good client. He never tried to inject himself in the preparation of his case or how it was tried. He simply cooperated with us to the fullest extent. And he always maintained that what he told us was

the truth. And I never had any reason to disbelieve him. We prepared our case and we tried it that way. And he has never changed in all these years, he has never changed what he said the facts were during all these years. I hope I have answered your question. Perhaps not fully.

Q. Do you think he's innocent?

A. I believe that he believes that what he said took place, and that certainly because he believes that, I believe it. And there's no question in my mind that he believes that's what took place. Now other people may also believe that they remember the facts differently. But after 27 years in the arena representing, I've had more than 200 jury cases, 30 capital cases before I ever went to the bench, so I know there's always two sides to every story. You can get a witness to testify to one thing one day and a week later or even a day later that witness may remember something different, and may see it a little bit differently. Yes. I believe him. Still do believe him.

Q. Pursuant to instructions from Judge Green, did you have Mr. Leon submitted to a lie detector test?

A. Sure did.

Q. What were the results?

A. He passed the polygraph. I picked what I considered to be the best in the business. And I took him over there. And after talking to Judge Green, Judge Green advised me that if former Judge Leon passed the polygraph, that he would withhold adjudication. And pursuant to his instructions, I made an appointment with this examiner, who came highly recommended by the State Attorney's Office and Tampa Police Department and the Sheriff's Department, who had no interest in this case whatsoever. And I took Mr. Leon over there. He passed the polygraph And I so advised Judge Green of that matter. And in the meantime I think the State of Florida had contacted him and said that they did not want to participate. But this was after the fact. So he had already passed the polygraph.

MR. BROWN: No more questions.

MR. MILLER: Mr. Coxe?

BY MR. COXE:

Q. Judge, my name is Hank Coxe from Jacksonville.

A. Good morning.

Q. Good morning. If he had passed the polygraph, which we could confirm would be one circumstance that would corroborate other people's belief that he was innocent, I believe you said the judge would withhold adjudication?

A. Told me directly he would.

Q. Why would he enter a plea in the first place if this confirmed it?

A. Why would he enter a plea? He didn't enter a plea.

Q. No. Why would he, before the benefit of withholding an adjudication of guilt, you said if he was convicted by the jury?

A. The jury had already come back.

Q. This was post jury verdict?

A. Yes.

Q. I apologize. I misunderstood. I though that was pretrial.

A. No.

Q. You mentioned his honesty in the community. And I'm assuming you're speaking of the community of people you know who also know him?

A. Yes, sir.

Q. There has been with Judge Alvarez, and in part with yourself, some discussion about the general community tenor in Tampa in the early 1980's. Judge Leon, Judge Merckle, I think we heard about three commissioners, et cetera, et cetera, a media frenzy, for lack of a better term. Do you have a feel for what the sense of the community is in this area of people who don't know him personally, having been convicted of two counts of perjury?

A. I must admit that I'm surprised at the people that don't know him in the legal community now. We have so many new lawyers that have come in, even in my court now, there are lawyers that come in that I have never seen before. I go to the Bar meetings, and I mean, I'm not just talking about a few. I'm talking about I look everywhere, and there are very few that I know.

Now, my friends, of course, I will be 61 tomorrow. And I know I'm considered now to be a senior member of the Bar, an elder member of the Bar. But I'm surprised. He will come to maybe have lunch with me, like he did last week, nobody even knows him. They don't speak to him. And if I introduce him, they say, hello. So to answer your question, I don't think many people remember former Judge Leon.

Q. I apologize. I'm asking the question more in terms of the public.

A. Could you restate the question?

Q. Certainly. Do you have a sense from the public general of people who don't know him personally that he is guilty of perjury?

A. Nobody ever mentions it to me. It never comes up. Does that answer your question?

Q. Certainly.

MR. COXE: I don't have anything else, Mr. Chairman.

THE WITNESS: May I go one step further? You didn't ask me this question, but I wish to interject this, if I might.

MR. COXE: Certainly.

THE WITNESS: Cody Fowler of Fowler-White was a dear friend of mine prior to the time he passed away. And Mr. Leon worked up there, I believe in the real estate section before, and when he went to law school. And Mr. Fowler was extremely fond of Mr. Leon. And one of the last things that we talked about before he passed away, even after he was put in a wheelchair, he always said that he hoped the Mr. Leon's situation would be set

straight some day, and that he would get his license back. he was a fine young man. And that comes from a man who was a greatly admired former president of the Florida Bar Association, and a friend of mine for many years.

MR. COXE: Did Mr. Fowler also believe Mr. Leon's innocence?

THE WITNESS: Absolutely.

MR. COXE: I don't have any further questions.

MR. MILLER: Mr. Cassel?

BY MR. CASSEL:

Q. Judge, I assume you're testifying under subpoena?

A. Yes, sir.

Q. I think the record should show that.

A. You didn't ask this, and nobody asked me this. But I wouldn't accept a fee for representing him. I want you to know that. And he couldn't pay me. He offered to pay me. And I wouldn't take it. And neither did co-counsel. And for all of that work, no remuneration was asked and none was ever received.

Q. What is your judicial circuit?

A. 13th, Hillsborough County. I'm assigned to the Criminal Justice Division.

MR. CASSEL: I have no further questions.

MR. MILLER: Mr. Stewart?

MR. STEWART: I have no questions.

MR. MILLER: Mr. O'Neill?

BY MR. O'NEILL:

Q. Did the volatility of the situation in the early 1980's when all this occurred have anything to do with the jury's temper or lack thereof or have anything to do with the result, if you know, or do you have an opinion?

A. We discussed the possibility of perhaps asking for a change of venue because of the high profile of this case. And, of course, we had Judge Merckle coming along at the same time. And we had the other matters going on. And it was just so much going on. We considered that if we were not able to get a jury within a certain time period, that we thought that Judge Green would change the venue. And yes, we did talk about it. And there was newspaper reporters everywhere we went. We couldn't walk out of our office door, there would be newspaper reporters. There

would be newspaper reporters in the courthouse. In fact, one time when we left the courthouse we literally had to push them out of the way. I believe at one time the son-in-law of former Judge Leon literally had to push the people out of the way so we could get out the door. That's how many people were involved in the case. And there was so much generated feeling about what was going on. It was like a circus at the time.

Q. Judge Green was the trial judge?

A. Yes.

Q. And Judge Green is the one that said that if you get a polygraph he would consider it in the sentencing?

A. He told me he would withhold adjudication if he passed the polygraph. Yes, sir.

Q. Did he withhold adjudication?

A. No, sir, he didn't, because the state, after we went to the polygraph examiner, the state notified him that they would not participate in that. In other words, they were objecting to it after he told me what he would do.

Q. Was the motion for a new trial made?

A. Yes, sir.

Q. Was it denied?

A. It was denied. And an appeal was taken. And in fact, I think I filed a motion to withhold adjudication, and set forth all of the facts and even the questions. We were able to secure a copy of that yesterday of my motion, which I have. And if you want it, it's here for you. My motion to Judge Green. This has all been buried in the archives. And they had to go look for it. It's entitled, Motion for Order Withholding Adjudication. It sets forth the questions Judge Green asked me to ask him. And it set forth what took place and how it was asked and what his answers were. And they're here for you if you want.

MR. MILLER: Mr. Brown, would you like to make that an exhibit?

MR. BROWN: I would offer that into evidence as Applicant's exhibit.

MR. MILLER: May I see that, please?

BY MR. O'NEILL:

Q. One further question, Mr. Chairman. Judge Mitcham, you were co-counsel for Mr. Leon, right?

A. Right.

Q. Who was the other counsel?

A. Henry Gonzalez.

Q. And Ed Austin was the prosecutor?

A. He was one of the prosecutors. Steven Koonce led the prosecutor team from Jacksonville. And Mr. Austin, I believe, came down and only -- I saw him one time beforehand. And I think he came down and argued at sentencing. But basically it was Mr. Koonce and another assistant out of the Jacksonville office.

MR. O'NEILL: I have nothing further.

MR. MILLER: Mr. Coxe?

BY MR. COXE:

Q. Could you take a look at that?

A. By the way, Mr. Koonce is the same Mr. Koonce, if you have been following in the newspapers, that's been involved in the prosecution of the county judge up in Jacksonville that committed suicide. The same Mr. Koonce.

MR. O'NEILL: I had been following the judge, but I didn't follow the attorney.

THE WITNESS: Yes, sir. He's the prosecutor there in that case. Eventually moved to the federal government's team.

MR. MILLER: Mr. Coxe, will you take a brief look at that and let me know if you have any objection to its introduction.

MR. COXE: Mr. Chairman, I have no objection to it. I see the signatures. I assume it's the originals or in the court files. I have no objection to it.

MR. MILLER: We will enter that as an exhibit.

MR. BROWN: Thank you, Mr. Chairman.

MR. COXE: That will be your first?

MR. O'NEILL: No I think the first is the application for clemency.

MR. COXE: No. That's the Board's.

MR. MILLER: We do have a group of exhibits for the Respondent here, for the Applicant. I don't know how many -- most of them are affidavits. I think this would be number 18. Are there any further questions of this witness?

MR. YATES: Yes.

BY MR. YATES:

Q. Judge, did you represent Mr. Leon prior to the time when he recanted what he had told Mr. McDonald?

A. I believe that I was representing him the, yes, or I had been called or contacted.

Q. Did Mr. Leon recant prior to Mr. Merckle or after or do you have any recollection?

A. My recollection is that he had recanted prior to Judge Merckle, because I remember getting a telephone call from Barry Cohen, who was representing Judge Merckle. And we had a conversation. At least that's my recollection of it. You're going back a lot of years.

MR. YATES: That's all I have.

MR. MILLER: Ms. Schneider?

BY MS. SCHNEIDER:

Q. As a public member, can you tell me whether or not it's your opinion that Mr. Leon's conviction was largely due to the influence of the media rather than facts?

A. It would be so easy for me to say yes, you know, because I so desperately want to help him, because he's my friend, and I believe in him. There's no question in my mind that media influences any high profile case. I would have to say in searching my soul that, yes, it had an influence on the situation. The while

feeling in Hillsborough County at that time was one of, let's nail everybody, you know, type of thing. And we had a, not an easy time to get a jury in this case. It was not easy. And, yes, I would have to say it did influence the case, as it does in so many other situations.

MS. SCHNEIDER: Thank you.

THE WITNESS: It may be not quite in response to your question, but I would like to add this, if I might. If I ever saw an individual that had suffered enough, it's this man. I do not know of any man, me included, and I'm a strong individual, that could have gone through what he's gone through with his children and his wife's illness, and left this country that he loved so much, and gone to medical school in Mexico, not knowing if he'll ever get a license, and doing all that, and coming back and maintaining his standards. I don't know of many people who could have done that. I want y'all to understand, this is a good man. This is not just an average every day individual. And I know that he's been convicted. And I know the jury convicted him of perjury. But I believed him then, and I believe him now. And he has suffered enough. This is a good lawyer, and a good man. I'm proud to call

him my friend. I don't mind telling any of you that. And he's always welcome in my home. And he can come to work with me any time. I just want to make my position clear.

MR. MILLER: Are there any further questions of this witness? Thank you, Your Honor.

THE WITNESS: Thank you. And thank you for allowing me to get out so quickly.

MR. CASSEL: Happy birthday.

THE WITNESS: Good morning.

Supreme Court, U.S.
FILED
SEP 27 1995
OFFICE OF THE CLERK

CASE NO. 95-542

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

RICHARD EDWARD LEON, SR.

Petitioner,

versus

THE SUPREME COURT OF FLORIDA and
THE FLORIDA BOARD OF BAR EXAMINERS

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO
THE SUPREME COURT OF FLORIDA

APPENDIX
VOLUME TWO

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139 pp

INDEX TO APPENDIX

VOLUME TWO

9. Excerpts from Transcript, Testimony of Honorable James A. Arnold, Pages 54-59 ..... A 127

10. Excerpts from Transcript; Testimony of Judge Sam Pendino, Pages 91-100 ..... A 134

11. Excerpts from Transcript; Testimony of Carl Neill, Pages 127-135 ..... A 146

12. Excerpts from Transcript; Testimony of Fred L. Buckine, Pages 135-150 ..... A 157

13. Excerpts from Transcript; Testimony of Henry O. Wilson, Pages 158-163 ..... A 175

14. Excerpts from Transcript: Testimony of Felix Ruiz, Pages 8-16 ..... A 183

15. Pardon ..... A 193

16. Excerpts from the Rules of the Supreme Court of Florida Relating to Admissions to the Bar, Article III.B.2.a.-2.c. ..... A 196

17. Excerpts from the Rules of the Supreme Court of Florida Relating to Admissions to the Bar, Article III.B.3.a.-2.c. ..... A 200

18. Excerpts from the Rules of the Supreme Court of Florida Relating to Admissions to the Bar, Article III.B.4.a., b., e. ..... A 206

INDEX TO APPENDIX
Continued

VOLUME TWO
Continued

19. Affidavits ..... A 210

a. Arthur Noriega, IV ..... A 211
b. Delano S. Stewart ..... A 214
c. Joseph Voskerichian ..... A 218
d. Charles H. Scruggs, III, Esquire ..... A 221
e. Ronald K. Cacciatore ..... A 224
f. Laurence I. Goodrich ..... A 227
g. Roland Mantiega ..... A 231
h. Julianne M. Holt ..... A 233
i. Ralph M. Guito, Jr., Esquire ..... A 236
j. Thomas F. Granahan ..... A 241
k. Larry E. Solomon ..... A 244
l. Peter N. Busto ..... A 247
m. Susan A. Bohm ..... A 250
n. James C. Adkins ..... A 254

20. Response to Specifications ..... A 256

21. Excerpts from Transcript: Testimony of Richard E. Leon, Pages 204, 207 ..... A 261

DOCUMENT 9

Excerpts from Transcript

Testimony of Honorable James A. Arnold
Pages 54-59

* * *

MR. MILLER: Would you please be sworn in?

HONORABLE JAMES A. ARNOLD,

the witness herein, being first duly sworn on oath was questioned and testified as follows:

MR. MILLER: State your name and occupation for the record, please.

THE WITNESS: My name is James David Arnold. And I'm a circuit judge in Hillsborough County, Florida.

MR. MILLER: Mr. Brown or Mr. Kinney?

MR. BROWN: Mr. Kinney.

BY MR. KINNEY:

Q. Do you know the Applicant in this case?

A. Yes, sir. I've known Richard Leon for I believe 26 years.

Q. And in what capacity have you known him?

A. Originally I met him in 1968 at a big backyard party when I was dating my wife. And it was socially at first. He was friends with my wife's family. And I would see him at various functions. Then in 1969 it was professionally when he represented

my wife and I when we were in an automobile accident where a gentleman ran a red light and hit our car. And at that time when I got to know him as an attorney/client relationship, I started to talk to him about law school. And he helped me along and gave me some advice. And I ended up applying to Cumberland Law School, where he went to law school. And he wrote letters of recommendation to help me get in. And after graduating, I've known him when he was on the bench.

Q. How long have you been a circuit judge?

A. I have been a circuit judge, I think it's four and a half years now. And prior to that I was a county court judge for five years. And prior to that I was in private practice for nine years. And prior to that I was an assistant state attorney for two years.

Q. Do you have an opinion as to the Applicant, former Judge Leon, his reputation in the community of Tampa, Hillsborough County, for honesty, truthfulness, ethics and good character?

A. Yes, sir, I do.

Q. And what is that opinion?

A. I think his reputation for truth and veracity and honest character in this community is excellent.

Q. Do you have an opinion as to his fitness and competency as a lawyer?

A. Absolutely. Not only having seen him practice law on the bench, but personally in representing me in a civil case.

Q. Do you in your contacts with the judge have a opinion as to whether he's accepted the legal consequences of his conviction?

A. Yes, sir, I do. I believe he has. He accepts his conviction, and the sentence he was given. And he's never demonstrated any ill will or bad feelings toward anyone who prosecuted him, or his sentence, or anything of that nature.

Q. Would you recommend him for admission to the Florida Bar?

A. Yes, sir, I would.

Q. Do you feel he would be a capable attorney and well qualified if accepted by the Bar?

A. I've known him in the past to be an excellent attorney, and I believe he would be a very capable and good attorney now.

MR. COXE:

BY MR. COXE:

Q. Your Honor, my name is Hank Coxe from Jacksonville.

A. Yes, sir.

Q. You testified that you feel his reputation in the community is excellent?

A. Yes, sir.

Q. What community are you referring to?

A. The legal community with respect to other lawyers that I know. The social community of people that I know that know Mr. Leon. I've heard lawyers talk about him. I've heard friends that I'm acquainted with talk about him, or are aware of his case and conviction.

Q. Do you share a feeling, from your knowledge -- let me ask you first, what knowledge do you have of the underlying facts that precipitated the perjury convictions?

A. I know he was charged with three counts, I believe. And eventually convicted of two counts. He was adjudicated, placed on five years probation, received a $5,000 fine, a thousand hours of community service. And I'm aware from when the case

arose, and when it went to trial, I didn't sit and watch the trial, but I was aware of what was going on.

Q. Have you ever discussed the facts yourself with Mr. Leon as to what was involved with Judge Merckle, Mr. Avery, Mr. Avery's daughter, et cetera?

A. We didn't personally discuss the facts, but I'm aware of what the facts were, that the allegation was that he had come down to talk to Judge Merckle concerning this girl.

Q. Do you have an opinion, and the only reason I ask you this is just to get to this, do you have an opinion or some understanding that Arden Merckle duped Mr. Leon in any way in this whole thing?

A. I have no opinion at all. I don't know.

MR. COXE: That's all I have, Mr. Chairman.

MR. MILLER: Ms. Schneider?

MS. SCHNEIDER: No questions.

MR. MILLER: Mr. Yates?

MR. YATES: No questions.

MR. MILLER: Mr. O'Neill?

MR. O'NEILL: Nothing.

MR. MILLER: Mr. Stewart?

MR. STEWART: No questions.

MR. MILLER: Mr. Cassel?

BY MR. CASSEL:

Q. Judge, are you testifying under subpoena?

A. Yes, sir. That's the only way I could testify.

MR. CASSEL: The record should show it.

MR. MILLER: Are there any other questions of this witness?

MR. KINNEY: No.

MR. MILLER: Thank you, sir. You're excused.

* * *

DOCUMENT 10

Excerpts from Transcript:

Testimony of Judge Sam Pendino
Pages 91-100

* * *

MR. MILLER: How many more witnesses do you have?

MR. BROWN: Well, we have Judge Pendino, who's still waiting. We have two factual witnesses. And the remainder of the witnesses are character. I don't think these will be as long as the other judges.

MR. MILLER: Will you be sworn in?

HONORABLE SAM PENDINO,

the witness, being first duly sworn on oath, was questioned and testified as follows:

MR. MILLER: Will you please state your name and your profession for the record?

THE WITNESS: My name is Sam Pendino. And I'm a circuit court judge here in the State of Florida, Hillsborough County.

MR. MILLER: Is that Candino?

THE WITNESS: Pendino. P-e-n-d-i-n-o.

MR. MILLER: Thank you, sir. Mr. Brown?

MR. BROWN: Mr. Kinney.

BY MR. KINNEY:

Q. Judge, prior to being a circuit court judge, were you a county court judge?

A. Yes, sir.

Q. And how long were you a county court judge?

A. I was a county court judge for six years. I was elected in 1984.

Q. And how long have you been on the bench?

A. Well, at the end of this year it will be 10 years. I was elected in 1984.

Q. And how long have you been on the circuit bench?

A. Well, at the end of this year it will be four years.

Q. How long have you known Dick Leon?

A. I've known him for approximately, well, at least 27 years. I want to say approximately 30 years. But 27, 28 years.

Q. Give us a little background as to your relationship with him, social or businesswise.

A. Mr. Leon was a friend of the family's. And occasionally we would have like an Easter party or Christmas party, and our families would attend. And this is where I met Mr. Leon.

Actually it was before law school. And I occasionally would see him at these parties, family gatherings, at my uncle's house. And he suggested at one time a particular law school, which I applied to, and which I ultimately attended. And then, of course, I became an attorney. And in private practice he had suggested to become a judge to me. And I again took his advice. And I'm a judge today. I basically know him through these family gatherings. His family would gather with my family, because evidently his family, his wife, his wife's, I think father and my uncle were nextdoor neighbors. And they would, together the two families would have a large family gathering. And that's basically where I would see him, and perhaps talk to him. And then, of course, as an attorney I would see him around the courthouse. And I saw him obviously when he was a judge on a couple of occasions.

Q. And you're aware of his having been disbarred?

A. I am. I was one of the attorneys that agreed to assist him in his defense when the charges were ultimately filed against him. I took on the responsibility or the assignment of the perjury charges. He had two perjury counts, I think. And from a legal standpoint I did a lot of research on that particular, on those

particular counts. And I did it, I think there were a group of attorneys and I did it as part of the group. There was no charge involved, or anything like that. It was just to help Mr. Leon.

Q. Since his disbarment, you've had contact with him, I presume, from what you just said. Has he accepted the legal consequences of his conviction, in your opinion?

A. He certainly has. He's accepted and suffered, you know.

Q. Do you have an opinion as to his character and moral standing and integrity in order to become a, be admitted to the Florida Bar?

A. I do.

Q. And what is that opinion?

A: My opinion is that if you would grant him the opportunity to again practice law here in the State of Florida, he will be an asset to the Bar and to the community. I have spoken, his general reputation in the community is excellent. Mr. Leon is what I would call a gentleman. And after all the people that I have contact with, and his name would come up, I have not had, me personally, perhaps y'all have spoken to other people -- but not one person says anything unpleasant or derogatory about Mr. Leon. He

would truly be an asset to the Bar and the community. That's my opinion.

Q. Do you feel that he intends to conduct himself in an honest fashion in the future if given an opportunity?

A. There's no doubt in my mind that he will. I can only gauge that by his past actions. He has conducted himself throughout these years as a professional, in a exemplary fashion. He's always expressed a desire to return to the practice of law, although I'm aware and familiar that he did attend medical school.

Q. Would you recommend him now to this Board for readmission to the Florida Bar?

A. With no reservations. I would highly recommend him for readmission to the Bar.

MR. KINNEY: Thank you.

MR. MILLER: Mr. Coxe?

BY MR. COXE:

Q. Your Honor, my name is Hank Coxe from Jacksonville.

A. Glad to meet you, sir.

Q. When you joined with other attorneys to assist Mr. Leon, did that include the benefit of meeting with Mr. Leon

himself to determine what the facts or his version of the facts were?

A. I personally did not meet with him regarding the facts from him.

Q. Mr. Gonzalez shared them with the other attorneys to assist?

A. Well, the other attorneys shared them with each other, yes, sir.

Q. And you have been on the bench for how long?

A. Approximately ten years. At the end of this year it will be ten years.

Q. And the circuit bench for how long?

A. County bench, six years. Circuit bench, three and a half years. It will be four years at the end of this year, sir.

Q. Have you sat in a criminal division since you have been in the circuit court?

A. Yes, I have.

Q. Let me briefly tell you what my experience has been on the criminal bench, not on the bench, but on the criminal process, and ask you if it's comparable in Hillsborough County.

A. All right.

Q. You understand the distinction between adjudicating someone guilty as opposed to withholding adjudication?

A. Yes.

Q. When someone is sentenced, if an order is ordered withholding adjudication, there are no fingerprints taken, is that correct?

A. I would think so.

Q. Now, you could, as a circuit court judge, place a person on probation after having adjudicated them guilty, correct?

A. Yes, sir.

Q. You could place a person on probation after having withheld adjudication of guilt, is that correct?

A. Certainly, yes.

Q. So the mere fact that someone is being fingerprinted does not in and of itself tell you that someone has not been put on probation, does it? It doesn't tell you anything about the sentence one way or the other, does it?

A. Just by looking at the fingerprinting of the person?

Q. Let me back up a second. Let me ask you this way. If you saw that a person in a circuit court proceeding either during or immediately after were being fingerprinted, correct, that in and of itself would tell you nothing about what the sentence imposed had been, would it?

A. Well, it would tell me something.

Q. Tell you that it had been adjudicated guilty?

A. Not necessarily. It would tell me that the person is being booked.

Q. Being booked?

A. Being --

Q. Have you adjudicated someone guilty and also placed the person on probation?

A. Yes.

Q. Now, is that person booked for some reason?

A. I'm trying to recall, because it's been about four years, four and a half years from the criminal bench. Sometimes at one point from what I recollect they were not fingerprinting everyone. And then later on the law changed, and then they started booking

anybody that was adjudicated, whether they went to jail or not. Right.

Q. So, my question is, the act of fingerprinting, right, tells you nothing about the sentence, correct?

A. Not necessarily. Not necessarily.

Q. In other words, seeing someone being fingerprinted does not mean to you that ipso facto, that the person is going to prison or going to jail or being put on probation, correct?

A. Correct.

MR. COXE: I have nothing further, Mr. Chairman.

MR. MILLER: Mrs. Schneider?

MS. SCHNEIDER: I have no other questions.

MR. MILLER: Mr. Yates?

BY MR. YATES:

Q. You represented Mr. Leon in connection with the perjury parts of the case, right?

A. Yes.

Q. And, in fact, the perjury charges didn't have anything to do with the statements that he'd made to Mr. McDonald in connection with the investigation, the JQC investigation, did they?

A. Quite frankly, I don't remember that far back. I know from a legal standpoint the argument and the research that we were doing was such that the statements that he made were not made under oath. And that was part of the facts, some of the facts that we were looking into. But quite frankly, sir, it's been a number of years since I really --

Q. So you wouldn't be surprised, then, to find out, because it's been a long time, you wouldn't be surprised to find out that the indictment actually did relate to statements made or allegedly made under oath before the JQC?

A. Well, it's not that I would be surprised. I'm aware obviously that he was convicted of the two counts of perjury. And obviously our motions to dismiss those two counts based on a legal argument were not successful. And yes, sir, I am aware of that.

MR. YATES: Thank you.

MR. MILLER: Mr. O'Neill?

MR. O'NEILL: I have no questions.

MR. MILLER: Mr. Stewart?

MR. STEWART: I have no questions.

MR. MILLER: Mr. Cassel?

BY MR. CASSEL:

Q. Judge, are you testifying under a subpoena this morning?

A. Yes, sir.

MR. CASSEL: I want the record to show that for you.

THE WITNESS: Thank you very much.

MR. CASSEL: I have no further questions.

MR. MILLER: Any further questions?

MR. KINNEY: No.

MR. COXE: No further questions.

MR. MILLER: Your Honor, you may be excused.

THE WITNESS: Thank you.

* * *

DOCUMENT 11

Excerpts from Transcript:

Testimony of Carl Neill
Pages 127-135

* * *

MR. MILLER: Will you be sworn in?

CARL NEILL,

the witness, being first duly sworn on oath, was questioned and testified as follows:

MR. MILLER: Sir, would you please state your name and your profession for the record?

THE WITNESS: My name is Carl Neill, N-e-i-l-l. And I'm retired.

MR. MILLER: Mr. Kinney?

BY MR. KINNEY:

Q. Prior to retirement, what did you do?

A. All righty. My main career, I was with the Department of Health and Rehabilitative Services in Tampa, primarily.

Q. How long would that have been?

A. For 31 years. And after that I retired and went to work for Senator Bob Graham as a staff assistant part-time in the Tampa office for about four and a half years. And then I retired altogether.

Q. What was your educational background?

A. I have a Bachelor's degree in journalism from Florida Southern College. A graduate's certificate in social work from Florida State University. Master's degree in social work from Tulane. And I did some graduate work at Harvard in management.

Q. Do you know Mr. Dick Leon?

A. Yes, I do.

Q. When did you first meet him?

A. I met Mr. Leon in 1983.

Q. And where did you meet him?

A. I met him in Tampa at the HRS office.

Q. And what was your connection with him thereafter?

A. Well, I was the district administrator for HRS in Hillsborough, Cook [Polk, sic], Hardee, Highland and Manatee Counties. And I received a call from Judge Green in Bartow, who asked me if we would, if I would provide an opportunity for Mr. Leon to work a thousand hours of community service in Tampa. And Judge Green was considering that at the time. And I told him that normally I wouldn't do that. But the staff members had so much respect for Mr. Leon that we would make an exception and

provide an opportunity for him to work with the agency for a thousand hours.

Q. And do you have a recollection of how long it took Mr. Leon to do those thousand hours?

A. Yes. It took him about six months.

Q. Was that normal or unusual?

A. No. He was very punctual. And applied himself fully. We had a problem with guardianship for people who were developmentally disabled, who had come into the state care. And their legal status was all messed up. We didn't have the legal time available to get the records straight to get the proper legal status assigned to each individual. So, we assigned him to that. And it was a full workload.

Q. And would you report to the court occasionally regarding his thousand hours of work?

A. Yes. I did not supervise him directly. But I supervised the attorney who supervised him. And we make periodic reports to Judge Green in Bartow.

Q. Now, after the termination of his one thousand hours, did you have any further contact with Mr. Leon?

A. Yes. Several months went by. And then he came to work for the agency with the Child Support Enforcement Division that we had at the time.

Q. And how long did he work for the HRS after his thousand hours were up?

A. He worked, I'm not sure, I think it was for a period of four or five months. He was in an automobile accident. And had to leave. Had to give up work at the time. And then I retired. And I'm assuming he never came back.

MR. KINNEY: You may inquire.

BY MR. COXE:

Q. I'm Hank Coxe from Jacksonville.

A. Yes, sir.

Q. Did Judge Green tell you why he would like Mr. Leon to work with your agency? Any reason for that?

A. I was familiar with what was going on.

Q. Go ahead.

A. I was familiar with it from reading the newspaper. That's all I knew about it. And until the time that Judge Green called me, I really didn't know what he was considering.

Q. When he called you, did he tell you why it was he was interested in Mr. Leon working with you or your agency?

A. I'm not sure. That's been like ten years ago. He indicated to me that he was considering a sentence. And that that would be part of the sentence. And asked me if he determined that, then would we be willing to do this. And so I told him that we would.

Q. So if I understand it correctly, Mr. Leon, he did the thousand hours?

A. Yes, sir.

Q. Then there's a several month gap, however long it was?

A. Yeah. I don't know how long. But it was a matter of months.

Q. Then he's back working employed by HRS?

A. In the child enforcement. Not in the same responsibility.

Q. In an umbrella agency?

A. Yes.

Q. How long was he there?

A. He was there four or five months before he got in an automobile accident and hurt, got his back hurt.

Q. After his accident, did he return to work for HRS?

A. No. He didn't come back.

Q. When was the last time you had any communication with Mr. Leon?

A. Well, I retired. And I didn't see him again for like five or six years, something like that.

Q. And you saw him again under what circumstances?

A. I had advertised a condominium for sale in Carrollwood Village area. And this lady called and asked us if she could come see it, which she did. And I never met her before. And she liked it. And I had moved to Lakeland. And she asked if she could bring her husband by to see the condo. And I said, sure. And we set a time for 7:00 o'clock. And here she comes, and she has Mr. Leon with her. And I didn't --

Q. Pure coincidence then?

A. I didn't know it was Mrs. Leon, frankly. She didn't tell me her name. And I had not seen him in maybe five, six, seven years.

MR. COXE: That's all I have.

MR. MILLER: Ms. Schneider?

MS. SCHNEIDER: No questions.

MR. MILLER: Mr. Yates?

MR. YATES: Nothing.

MR. MILLER: Mr. O'Neill?

MR. O'NEILL: No questions.

MR. MILLER: Mr. Stewart?

MR. STEWART: No questions.

MR. MILLER: Mr. Yates?

MR. YATES: May I ask one?

BY MR. YATES:

Q. So as far as you know, Mr. Leon didn't work any more for HRS than what was required to satisfy his sentence, is that right?

A. On the thousand hours?

Q. Yeah.

A. Right. He worked the thousand hours, with developmentally disabled.

Q. But he didn't work 2000 hours?

A. No. And I can't tell you he didn't work a thousand and ten. But he satisfied the expectations of, and the restrictions that Judge Green had put down.

MR. YATES: That's all.

MR. MILLER: Mr. Cassel?

BY MR. CASSEL:

Q. Mr. Neill?

A. Yes, sir.

Q. When Mr. Leon worked for HRS, was he paid?

A. No, sir.

Q. Not paid?

A. No. Not for the thousand hours. After he came back, he worked in child support, he was paid at that time. Yes, sir.

Q. Is it your experience that other people have spent time working in the HRS to do community work?

A. No. Not under, not under those judge's orders. That's the only one I'm ever familiar with. And as you know, HRS is not the best funded agency and the most highly staffed agency in the world. And it's not necessarily an add-on. But it takes a lot of time to supervise to make sure that someone is dong what they're

supposed to be doing under the direction of the court, because we're very respectful of the court. And I was reluctant to do it. But the staff members felt so highly about Mr. Leon that, and I sensed this, I did not know him. I had never met him before. But I knew the staff had a great deal of respect for him. And so I told that to Judge Green. And he said okay. He said, you've made my day.

Q. At the end of the thousand hour period, it was your conclusion that it was a satisfactory experience?

A. It was a very satisfactory experience. I sat down and I thanked him for what he had done, because it was a task that needed to be done, clearing up the legal status of all these people who were in HRS's care. And they were sort of like in limbo, some of them 30 years old and 40 years old.

Q. If you liked that experience, would you consider that HRS could profit by having similar experiences with others?

A. Mr. Cassel, I left HRS eight years ago. And it went downhill, for some reason. It really did. The caseloads have doubled. And to tell you the truth, I have only been back one time to visit. So I really cannot speak to that point.

Q. Your answer is the reason for my question.

MR. CASSEL: Thank you very much.

MR. MILLER: Are there any further questions of this witness?

MR. KINNEY: No questions.

MR. MILLER: Sir, you're excused. . . .

* * *

DOCUMENT 12

Excerpts from Transcript:

Testimony of Fred L. Buckine
Pages 135-150

* * *

MR. MILLER: . . . . Will you be sworn in?

FRED L. BUCKINE,

the witness, being first duly sworn on oath, was questioned and testified as follows:

MR. MILLER: Please state your name and your profession for the record?

THE WITNESS: My name is Fred L. Buckine. I'm a practicing attorney here in Hillsborough County. Business address is 7017 North Florida Avenue, Tampa, Florida, 33602. Law office of William McLane, P. A.

MR. MILLER: Mr. Brown?

BY MR. BROWN:

Q. Thank you. Are you also a retired judge?

A. Retired I'm not. I was a judge. I was on the county bench, yeah. Governor appointed me, and I served for some nine months. I'm now in private practice. Not retired. Don't make a mistake. I'm not retired.

Q. Do you know Richard Leon?

A. Yes. I know Judge Leon.

Q. How long have you known him?

A. I have been practicing law here 15, 16 years. I met Judge Leon '78, '79. I was a prosecutor in this circuit in juvenile court, and Judge Leon was a juvenile judge at the time. So I would say around 15 or 17 years.

Q. And you saw a good deal of him in those days?

A. A lot of him as a prosecutor. Later in felony. I was a special prosecutor, and later in private practice as a defense counsel.

Q. And what is your opinion of Judge Leon's character?

A. I think Judge Leon is an exceptionally fine man. He has the character that if I had to emulate one, I would follow.

Q. Are you aware of his disbarment from the Florida Bar?

A. Yes, I am.

Q. Are you aware of his convictions?

A. I am aware of the totality of those circumstances. I was a practicing attorney here in Hillsborough County during that time period, yes.

Q. And you still have that opinion of him?

A. Yes, I do.

Q. Did you understand at the time and now the general nature of the allegations against Mr. Leon that resulted in those convictions?

A. Yes. Along with the other individuals involved and the total circumstances. As one here and as a friend of Judge Leon, I followed it very closely. Yes.

Q. Do you think that Mr. Leon understands the legal consequences of his conviction?

A. Yes.

Q. Do you think he has any ill will or malice towards anyone who was involved in the criminal prosecution?

A. No. I don't think so.

Q. Will you describe his reputation within the community?

A. Throughout the entire time I've known him, a friend's friend, a lawyer's lawyer. As a judge he demonstrated the ability to listen. And as a defense counsel that's all you want, someone to listen. His rulings were fair and compassionate, and viewed with humanist [sic]. I was also aware of his hobby, building his boat, and his family. I saw him outside of the, being a judge in terms of the community, on projects we worked on together. We

both had concern for the public, mine mostly being youth. And we had those concerns to work together on.

I'm also aware of what he did after the incident you're referring to. He went down south, come back. I was in contact with him throughout. We've talked about it together. We've cried together. We've prayed about it. And he's worked with me and helped me, and I've tried in turn to help him.

Q. Is there any doubt in your mind that he would continue to conduct himself in such a exemplary fashion?

A. No. No doubt in my mind.

Q. Would you, if given the opportunity, refer clients to him or hire him?

A. Yes, I will, without qualification, without reservations.

Q. Would you recommend that he be readmitted to the Florida Bar?

A. Yes, I would.

MR. BROWN: I have nothing further.

MR. MILLER: Mr. Coxe?

BY MR. COXE:

Q. Mr. Buckine, my name is Hank Coxe from Jacksonville.

A. Yes.

Q. Did you have any direct familiarity of the circumstances of 1982?

A. Direct in terms of personal involvement, the answer is no.

Q. I don't mean involvement in participating in the events. I understand that. I'm talking about from either talking to Mr. Leon or talking to Mr. Merckle, anything like that?

A. No. I spoke to near [sic] Judge Leon nor Judge Merckle during the time of this incident.

Q. I assume as a general rule you would accept the premise that an adult is responsible for his and her actions?

A. We all are, yes.

Q. Do you have any sentiment that Arden Merckle is in any way responsible for Mr. Leon's actions?

A. Do I have any sentiment?

Q. In other words, however you might articulate it, do you feel that in a way, perhaps, it's sort of Mr. Merckle's fault, not Mr. Leon's fault, as to what happened in 1982?

A. If you're asking my opinion where I sit in that, in response to that question?

Q. Uh-huh.

A. I would say that Judge Leon is a friend to a friend. And it's probably a weakness of having that kind of faith to believe in someone that would not betray you. Now, you asked my opinion. My view of that. One of the things my grandmother used to say as a boy, no matter how good you are, just watch who you hang with. Meaning that often times you can get painted with the same brush and not necessarily be a fence post.

Q. You were a lawyer before you became a judge?

A. Yes.

Q. So, as a lawyer without having been a judge you, I assume, had a great appreciation for the standards that were expected of judges?

A. Yes.

Q. That that those are circumstances that would go beyond, you know, int he generic, who you run with, right? Each individual knows what standards are expected of him or her?

A. Yes. But even within that context, judges don't operate in a vacuum by themselves. They have colleagues with whom they associate, the same as we lawyers do. And I suppose the only background for one's performance and/or objective standards would be that as viewed from the totality of his or her colleagues.

Q. Just hypothetically, Mr. Buckine, let's assume we're dealing with two judges on the bench, and a case is pending in front of Judge Y, but Judge X is the one who has an interest in the outcome of that case. So Judge X communicates with Judge Y, correct? Judge X takes the initiative to go to Judge Y and discuss the case, whatever instance to discuss the case. In that hypothetical, what influence is being brought to bear to Judge X by Judge Y? Judge Y has no independent interest in the outcome of the case. In the example you give of who you run with, because Judge X has the interest and Judge Y doesn't have the interest in the case, therefore the metaphor does not apply, does it?

A. In your set of circumstances, maybe not.

Q. I do not quarrel with the sincerity and honesty with which you earlier described the number of people who have an opinion of Mr. Leon's honesty, truthworthiness, et cetera. Okay.

How, if you can tell me, and this is not to argue with your sincerity or honesty, how do you reconcile the fact that a person has been convicted of perhaps the most egregious crime of perjury, one that goes to the heart of honesty, has been convicted beyond every reasonable doubt unanimously by a jury of two counts of perjury, with the opinion on the reputation? I mean, how do you reconcile that? I'm not saying it can't be. But how do you do that? How do you say to someone, I have the highest regard for this person's truthworthiness, and in the same breath know this person has been convicted of the highest or worst moral turpitude offense there is?

A. Easily. Mandella spent 27 years in prison, and now he's president. He was convicted of the same thing. I see no inconsistencies in that. Having been convicted does not mean the heart and soul of a person is taken away. That would mean that a conviction is final in the totality of the human race. And that is not true. We all know that men make mistakes and men correct them. But I would have no problem asking that reconciliation no more than a sinner repenting for his sins, and being redeemed. If the principle isn't applicable in our Judeo-Christian society, it certainly is applicable in the law we operate under.

Q. If I understand that, then, whether it's the Nelson Mandella analogy or whatever, it accepts the fact that the person is guilty of what they were convicted of, right, and that they have been rehabilitated, et cetera?

A. Well, if in your hypothetical you include the fact of the guilt, then it does.

Q. Do you in your analysis, knowing Mr. Leon as well as you do, all right, except not that he was convicted, but that he is guilty or was guilty of what he was accused of doing? Do you factor that in, that he did do what he was convicted of?

A. I do not factor that in. You use conviction, you used in your analysis. I don't know if he did what he did do. I don't know the facts of that. I know of the conviction.

Q. Do you have yourself within your own analysis, is what I'm interested in, a personal feeling he is guilty, not that he was found guilty, but that he is guilty or that he's not guilty?

A. Do I have a personal feeling that he is guilty?

Q. Right. Or that he is not guilty. Either way?

A. My response to that, counselor, is that he was convicted. That's on the record. Do I feel he is a bad person? I don't rule on his guilt. Do I feel he is a bad person? My answer is no.

Q. I'm not quarreling with you. I'm just asking you your approach to that analysis.

A. My answer to your question is no,. Is there maliciousness in his heart, my answer to your question is no. As to the system we operate under in terms of having been found guilty, the record speaks for itself.

MR. COXE: I appreciate it, Mr. Buckine.

THE WITNESS: My pleasure.

MR. MILLER: Mrs. Schneider?

BY MS. SCHNEIDER:

Q. You indicated you followed this case during the time that it occurred, and during the time of the trial. Could you tell me what the community was like, the Tampa community where Mr. Leon was involved? What was their feeling of him at that time? What is the feeling now of Mr. Leon?

A. My answer will have to be myopic in the sense that to see what a person sees it's probably better to stand behind them

than in front of them. The community that I refer to is a limited community, the professional community of colleagues. The community I live in is the Afro-American communities, which he's touched. Invariably the opinion there is that he is still the same person he was before.

Now, understanding the backdrop of that, how that general opinion is reached, doesn't necessarily change over because of what the newspaper says. My following it was with the interest generated within the professional community because those of us who were primarily dealing in criminal law, defense, law, as in every instance, on a scale from one to ten, you have a feel or an opinion feeling for the judges. You sort of know them, as it were. So in that regard my answer to the question is that community which I could probably speak representatively of was favorable.

Q. Thank you.

MR. MILLER: Was than an answer?

THE WITNESS: No. It was a bifurcated yes on one side, and an I don't know on the other. Now, you must remember at that time we weren't permitted in the golf courses. So I have to speak from where I was.

MR. MILLER: Mr. Yates?

BY MR. YATES:

Q. You have made some reference to perhaps working with Mr. Leon in terms of, you said you worked with youth?

A. Yes.

Q. Did he work with you through something?

A. I do a lot of youth counseling and speaking to youth in the community, both in and out of my church. And I would often get a chance to talk to Judge Leon, particularly when we were in the Juvenile Division in terms of the problems that we're confronted with, the solutions that would be in place to answer the problems, to address them.

Q. This is while he was still a judge?

A. Yes.

Q. So y'all haven't been engaged in community activities together or anything since the time he was disbarred?

A. No. No. Because after that time I think, if I remember correctly, he went, he was here. Then he went down south, went to school. We did talk a couple of times on the telephone. And

when he got back we talked a couple of times on the phone. So that's been the relationship subsequent.

MR. YATES: No further questions.

MR. MILLER: Mr. O'Neill.

BY MR. O'NEILL:

Q. Now we get to myopic bifurcation. What kind of a judge were you, a county court judge or --

A. I was a county court judge.

Q. And what year was that in?

A. That was in, I was appointed in June of '91, I think. And I served until the term was up in January of '92.

Q. Did you know Judge Merckle, who was involved in this instance, back in the early '80's?

A. Yes, sir.

Q. Could you characterize him for me the type of individual he was?

A. If you took my comments on Judge Leon from one to ten, ten, the highest, I would put Judge Leon at seven. I would put Judge Merckle on a four to five on the same scale.

Q. Was he an arrogant individual, overbearing? I understand he was chief judge when this occurred.

A. Judge Merckle was chief judge, yes.

Q. Was he overbearing or arrogant?

A. Judge Merckle --

Q. I don't think you want to answer my question.

A. Well, I'm doing to do what's best. If I can't say anything good about a person, I am not going to say anything less than.

Q. You can leave it right there.

A. Judge Merckle was effective in moving the criminal, in moving a criminal docket, particularly in the traffic divisions. Effective in doing that. We could get a 60 page docket done in four hours. So he was effective that way. And in creating ideas to, for Merckle Tower. This is what we have. So, there are positive things that was there. But like most men, Paul put it quite succinctly, we all fall short.

MR. O'NEILL: Yes, sir. I realize that.

MR. MILLER: Mr. Stewart?

MR. STEWART: I have no questions.

MR. MILLER: Mr. Cassel?

BY MR. CASSEL:

Q. Mr. Buckine, if I got your name right, you assumed a position on the bench because you were appointed?

A. I was appointed by the current governor, Governor Chiles, yes.

Q. And your term ran out. And did you run for election again on --

A. Yes. I was appointed 53 days before the election. And I haven't forgiven the governor for that. Because I had three opponents who had been out running two years. I closed my practice because a friend had submitted my name. And I took the bench. And I had three people out in front of me. I got 33,000 votes in 53 days, and they got 36,000. So I lost by three. A bitter disappointment, and $50,000 poorer. But I enjoyed the experience. Ironically enough it was back when I was a juvenile prosecutor that Judge Leon and I talked about it. I told him I would like to be on the judiciary. I would like to finish my career in that fashion. But that won't be the case.

Q. You have no plans now to go back to the bench?

A. No. I have a daughter that's in college. And she says, dad, I want to go to grad school. I have a 24 year old who's following her.

Q. Where did you go to law school?

A. Catholic University of America, though I'm a Baptist. Nothing to do with my religious preferences. It had to do with the Martin Luther King scholarships available in 1982.

MR. CASSEL: Thank you very much.

BY MR. MILLER:

Q. Is the fact that you lost by three votes the genesis for your statement that we all fall short?

A. No. I think that the governor having other things of importance in terms of politics, had to delay the appointment. And I think that he, being the fine man that he is, fell short. I held up my end because I stayed on to January. I should have gotten out then. But I think that Hillsborough County is a great area to practice law. I have known Mr. Brown for an extended period of time. And I was a director of, I was general counsel for the Department of Transportation. And Mr. Brown and my secretary worked closely together. And it's a great area to practice law

because we have some fine lawyers in Hillsborough County. And I say that with deference to all my colleagues. And I won't say anything bad about a person if I can't say anything good. And we all fall short of the mark we ascribe to.

Q. How long have you been a lawyer?

A. 24 years, after 12 years in the military.

Q. How long have you been a preacher?

MR. MILLER: I have no further questions.

THE WITNESS: Four and a half years, after eight years of running away.

MR. MILLER: Any other questions? . . . .

* * *

DOCUMENT 13

Excerpts from Transcript:

Testimony of Henry O. Wilson
Pages 158-163

* * *

MR. MILLER: Will you be sworn in, sir?

HENRY O. WILSON,

the witness, being first duly sworn on oath, was questioned and testified as follows:

MR. MILLER: Sir, will you state your name and your profession for the record?

THE WITNESS: Henry O. Wilson. And I'm an attorney at law and retired judge, and practicing law part-time now.

MR. MILLER: Mr. Brown?

BY MR. BROWN:

Q. How long were you on the bench?

A. 15 years and four months.

Q. Do you know Richard Leon?

A. I've known Richard since 1951. Know his entire family.

Q. And what is your opinion of Richard Leon?

A. Well, when Richard took the Florida Bar I wrote a letter for him just as if he was my own son. I have the highest opinion of Richard Leon.

Q. Are you aware of his disbarment from the practice of law and his conviction and sentence in a criminal prosecution?

A. Yes, sir, I am.

Q. You understand the general nature of the allegations on this?

A. Yes. I understand them.

Q. Do you think Richard has accepted the legal consequences of that conviction?

A. I am sure Richard accepts it. And I'm sure he's suffered. And I'm sure he feels that he's paid the penalty.

Q. Do you think he has any ill will or feelings of malice towards those who prosecuted him?

A. No. And I have discussed it. And he's just as happy as can be. He just wants to get readmitted.

Q. What is his reputation in Tampa and Hillsborough County?

A. Richard always had a good reputation. Even from the time he was deputy clerk down did I know of anybody that ever spoke ill of Richard Leon. Nobody.

Q. What about his reputation for his ability to practice law?

A. I think he has -- did you say ability or reputation?

Q. His reputation for his competence to practice?

A. He's competent. He's had a good reputation as a competent attorney.

Q. Do you think that he would continue to conduct himself in a exemplary fashion if he is permitted to be --

A. Readmitted?

Q. Be readmitted to the Bar?

A. I believe it with all my heart.

Q. Would you refer clients to him?

A. I sure would. I sure would.

Q. Judge, compare your opinion of Richard Leon with Arden Merckle?

A. Well, that's going to be quite a comparison. Do you want me to give my honest opinion?

Q. Yes, sir.

A. Well, I've known Arden Mays Merckle. I knew his grandfather. I knew his brother, who's a colonel in the army. I knew his sister. I knew the whole family. And there is no comparison in my opinion between Richard Leon and Arden Mays

Merckle. Arden was a browbeating, vindictive judge. He tried to force everybody to plead guilty whether you were guilty or not. That's my opinion.

Q. How did he treat his fellow judges?

A. Well, Arden was headstrong. When he would go into a meeting he just figured that, I am the boy, I am the judge. And he ran things his own way. In fact, there was one committee meeting down there they had him in for a hearing. They had to remind him that he was there at their request, and he wasn't on his bench. That's the truth of the matter.

MR. BROWN: I have nothing further. Mr. Coxe?

BY MR. COXE:

Q. Sir, do you have any firsthand knowledge of the circumstances of 1982 that preceded the convictions for perjury?

A. Somewhat.

Q. What is the source of your information?

A. Courthouse gossip.

Q. Do you know of any browbeating or alleged browbeating that Arden Mays Merckle did to Mr. Leon to get Mr. Leon to do whatever he did?

A. No. I don't know what he did, you know, to get Richard Leon to testify and take the course that he took. I don't know. But I could give you my opinion of what he did that he shouldn't have done.

Q. Of what who did?

A. Merckle.

Q. In this particular circumstance, what is it Merckle did?

A. To Richard Leon?

Q. That you think he shouldn't have done?

A. You're talking about that case he set aside, or are you talking --

Q. Right. The case he set aside.

A. Well, in the first place, he was the judge. And he just decided to take it upon himself to have that defendant brought back before him without notifying the state attorney, setting aside the three year sentence and put her on probation. I think that was terribly wrong. It could have been handled in a good way. He could have notified her counselor, notified the state, and had a hearing on it. And then decided it.

Q. What is your understanding as to why he did that?

A. Arden Mays Merckle at work.

Q. Do you know from any source of information what motivation Arden Mays Merckle had to help this girl?

A. None whatsoever, except somebody just says, how about putting her on probation. That's all I know about the girl. I don't know the girl. I just read about what happened in the papers.

Q. In your years on the bench, did you ever go to another judge without the lawyers who represented the parties present, and ask that judge to impose a particular sentence?

A. No. I never did.

Q. Would you have considered that absolutely improper?

A. I'm afraid I would have to answer that in the affirmative.

MR. COXE: I have nothing further, Mr. Chairman.

MR. MILLER: Mrs. Schneider?

MS. SCHNEIDER: No questions.

MR. MILLER: Mr. Yates?

MR. YATES: No questions.

MR. MILLER: Mr. O'Neill?

MR. O'NEILL: No questions.

MR. MILLER: Mr. Cassel?

MR. CASSEL: No questions.

MR. BROWN: Thank you, Judge.

MR. MILLER: Thank you, sir. . . . .

* * *

DOCUMENT 14

Excerpts from Transcript:

Testimony of Felix Ruiz
Pages 8-16

* * *

MR. COXE: If I could get the witness here.

THE WITNESS: Good morning.

MR. MILLER: Sir, will you please be sworn in?

FELIX RUIZ,

The witness, being first duly sworn on oath, was questioned and testified as follows:

MR. MILLER: Will you please state your name?

THE WITNESS: My name is Felix Ruiz, R-u-i-z, first name,. F-e-l-i-x. I'm a parole examiner with the Florida Parole Commission.

MR. MILLER: Mr. Coxe?

QUESTIONS

BY MR. COXE:

Q. Mr. Ruiz, if I appear to go through this fairly quickly, it's in the interest of time. How long have you been working in the parole commission?

A. In this capacity, approximately a little over three and a half years.

Q. Your responsibilities include doing investigations of applications for executive clemency?

A. That's correct.

Q. And for what purpose do you do an investigation for an application for executive clemency?

A. We receive applications. The purpose for us doing investigations, to verify information given to the Clemency Board in Tallahassee. And the applicant applies for various reasons. It could be to obtain civil rights due to felony convictions. Residence rights, if they're not citizens of the country or the state. Full pardons, and commutations of sentences for inmates' sentences in Florida state.

Q. And for purposes of application for clemency did you do an investigation of a Richard E. Leon?

A. Yes, sir.

Q. Did you interview Mr. Leon for that purpose?

A. Yes.

Q. Did you have the benefit before the interview of his actual application for clemency?

A. Could you repeat the question again?

Q. Did you have a copy or the original of the application for clemency before you when you did the interview?

A. Yes.

Q. Does the application for clemency provide a place where the applicant identifies the reason why the applicant wants executive clemency?

A. Yes.

Q. And did Mr. Leon identify a reason as to why he wanted executive clemency?

A. Yes.

Q. What was his reason?

A. The reason indicated for applying is that he had completed medical school, and due to his felony conviction it would present a obstacle for him to continue with his residency. So that if he obtained a pardon, I'm paraphrasing, it would help him or aid him in continuing in this career, in the medical career.

Q. Did you interview Mr. Leon?

A. Yes.

Q. Did you do that in approximately April of 1992?

A. Yes.

Q. Did you do it personally or by telephone?

A. Personally.

Q. Did you interview Mr. Leon personally as to what his stated reasons for being interested in clemency were?

A. Yes, I did. Not necessarily just that one specific question, because there were a multitude of questions that took place at the time of the interview.

Q. Did Mr. Leon express to you what his interests were in having executive clemency?

A. Yes.

Q. What did he tell you his reasons were?

A. His interest was to continue to pursue his career in medicine. And I specifically recall asking him what interests did he have or did he have a specialty. And he indicated a family practice, or as a family practitioner, due to relatives in his family currently practicing medicine in the area where he lived.

Q. Did you discuss with Mr. Leon whether he had any intention or expressed interest in practicing law, if he were granted a pardon?

A. He expressed no interest in practicing law. He indicated that he was either hurt or let down due to his conviction, and he maintained his innocence, and that he had no interest in pursuing a career in law or criminal justice.

Q. What did you do with the information you collected as a result of the investigation?

A. I included that in the portion of the Applicant's statement and attitude. And it's included in my confidential case analysis.

Q. Do you submit that information to someone else?

A. Yes.

Q. Who?

A. It goes to the Director of Clemency Administration for the Florida Parole Commission, who is Mr. Ray Howard.

Q. Is that Mr. Ray Howard in April of 1992?

A. Yes.

Q. Is it Mr. Howard's responsibility to make a recommendation one way or the other for pardon or executive clemency?

A. Yes.

Q. Did you submit the information to Mr. Howard with the understanding he had a right to rely on the information you submitted?

A. Yes.

MR. COXE: I have no other questions, Mr. Chairman.

BY MR. KINNEY:

Q. You conducted this examination on April 29th, 1992, Mr. Ruiz?

A. That's correct.

Q. I'm over here.

A. Yes. I was just thinking. Yes.

Q. I want to show you the application for clemency that you have testified you saw, and ask you if you would a read aloud the answer to Applicant's reasons for requesting consideration.

A. Okay. Applicant's reasons for requesting consideration, I have since my conviction graduated from medical school, and have taken the necessary exam for entering into residency, but with a conviction will experience a difficult time. I feel I have been a perfect example of rehabilitation, and would appreciate any consideration given me.

Q. Were you aware that on April 29th of 1992 that the Applicant could not, would not be eligible to take the Florida exam until June 12th of 1992?

A. No.

Q. You did a complete investigation on this man?

A. I would say yes.

Q. And during that investigation did you hear any derogatory or any bad remarks about him from any people that you questioned?

A. No.

Q. And did you, yourself, recommend clemency?

A. No.

Q. Did the man that you reported to recommend clemency?

A. I cannot say yes to that because I don't know. I was not -- his office is in Tallahassee. So I can't say what he actually recommended. I can't speak for him.

Q. Are you aware that clemency was granted to Mr. Leon by the governor?

A. Yes. Sometime after my report went to Tallahassee, yes.

Q. And were you aware that this was a full and complete pardon that he was granted?

A. Yes.

MR. KINNEY: Thank you very much.

MR. MILLER: Mr. Coxe?

MR. COXE: One additional question.

BY MR. COXE:

Q. Mr. Ruiz, if Mr. Leon had told you during the course of your investigation that he intended to resume the practice of law, would you have communicated that information to Mr. Howard?

A. Yes.

MR. COXE: I don't have anything else.

MR. MILLER: Mrs. Snyder [sic]?

MS. SCHNEIDER: No questions.

MR. MILLER: Mr. Yates?

MR. YATES: I have no questions.

MR. MILLER: Mr. O'Neill?

MR. O'NEILL: No questions.

MR. MILLER: Mr. Stewart?

MR. STEWART: Nothing.

MR. CASSEL: No questions.

MR. MILLER: Mr. Kinney?

MR. KINNEY: One other question, if I may.

BY MR. KINNEY:

Q. Would that have made any difference if you had communicated that information?

A. To whom?

Q. To your superior?

A. I can't answer for them.

MR. KINNEY: Okay. Thank you.

MR. MILLER: Thank you.

* * *

DOCUMENT 15

Pardon

State of Florida

Whereas, At a meeting this day, at which were present His Excellency, LAWTON CHILES, Governor of said State, JIM SMITH, Secretary of State, ROBERT A. BUTTERWORTH, Attorney General, GERALD LEWIS, Comptroller, TOM GALLAGHER, Treasurer, _____, Commissioner of Education, and BOB CRAWFORD, Commissioner of Agriculture, of said State, who under the Constitution of said State, have full power to grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses, it was determined that RICHARD E. LEON

who was convicted in the Criminal Court, Hillsborough County, Florida, December 14, 1983, of the offenses of Perjury (2 Counts) and Official Misconduct, and placed on probation for five years on each count, to run concurrent; and who was granted restoration of civil rights except the right to own, possess or use firearms on February 17, 1989; should now, upon showing made be granted a full pardon with the right to own, possess or use firearms; it being shown to the Board that he is living a law abiding life, and that the Florida Parole Commission after making a thorough investigation, recommended that he be granted a full pardon with the right to own, possess or use firearms.

Therefore, Be it Known, that the said RICHARD E. LEON, be, and he is hereby granted a full pardon of the above offenses with the right to own, possess or use firearms.

In Testimony Whereof, We have hereunto set our hands, this 29th day of September, A.D. 19 92.

/s/ Lawton Chiles
Governor.

/s/ Jim Smith
Secretary of State.

_____
Attorney General.

/s/ Gerald Lewis
Comptroller.

/s/ Tom Gallagher
Treasurer.

I certify the foregoing to be a true and correct copy of the original order.

/s/ _____
Commissioner of Education.

/s/ _____
Coordinator, Office of Executive Clemency

/s/ Bob Crawford
Commissioner of Agriculture.

DOCUMENT 16

Excerpts from the
Rules of the Supreme Court of Florida
Relating to Admissions to the Bar
Article III.B.2.a.-2.c.

FLORIDA BOARD OF BAR EXAMINERS

B. CHARACTER AND FITNESS REQUIREMENTS

Section 2.a. No person shall be recommended by the Florida Board of Bar Examiners to the Supreme Court of Florida for admission to The Florida Bar unless such person first produces satisfactory evidence to the Board of good moral character and an adequate knowledge of the standards and ideals of the profession and that such person is otherwise fit to take the oath and perform the obligations and responsibilities of an attorney.

b. The primary purposes of character and fitness screening before admission to The Florida Bar are to assure the protection of the public and safeguard the justice system. An attorney should be one whose record of conduct justifies the trust of clients, adversaries, courts, and others with respect to the professional duties owed to them. A record manifesting a deficiency in the honesty, trustworthiness, diligence, or reliability of an applicant may constitute a basis for denial of admission.

The revelation or discovery of any of the following may be treated as cause for further inquiry before the board decides whether the applicant possesses the character and fitness to practice law:

(1) unlawful conduct;

(2) academic misconduct;

(3) making or procuring any false or misleading statement or omission of relevant information, including any false or misleading statement or omission on the Application for Admissions to The Florida Bar, or any amendment, or in any testimony or sworn statement submitted to the Board;

(4) misconduct in employment;

(5) acts involving dishonesty, fraud, deceit or misrepresentation;

(6) abuse of legal process;

(7) neglect of financial responsibilities;

(8) neglect of professional obligations;

(9) violation of an order of a court;

(10) evidence of mental or emotional instability;

(11) evidence of drug or alcohol dependency;

(12) denial of admission to the bar in another jurisdiction on character and fitness grounds;

(13) disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction;

(14) any other conduct which reflects adversely upon the character or fitness of the applicant.

c. The Board shall determine whether the present character and fitness of an applicant qualify the applicant for admission. In making this determination, the following factors should be considered in assigning weight and significance to prior conduct;

(1) the applicant's age at the time of the conduct;

(2) the recency of the conduct;

(3) the reliability of the information concerning the conduct;

(4) the seriousness of the conduct;

(5) the factors underlying the conduct;

(6) the cumulative effect of the conduct or information;

(7) the evidence of rehabilitation;

(8) the applicant's positive social contributions since the conduct;

(9) the applicant's candor in the admissions process;

(10) the materiality of any omissions or misrepresentations.

DOCUMENT 17

Excerpts from the
Rules of the Supreme Court of Florida
Relating to Admissions to the Bar
Article III.B.3.a.-2.c.

FLORIDA BOARD OF BAR EXAMINERS

Section 3.a. Prior to recommending an applicant for admission to practice the profession of law in Florida, the Florida Board of Bar Examiners shall conduct an investigation and otherwise inquire into and determine the character, fitness and general qualifications of every applicant. In every such investigation and inquiry, the Board may obtain such information as bears upon the character, fitness and general qualifications of the applicant and take and hear testimony, administer oaths and affirmations, and compel by subpoena the attendance of witnesses and the production of books, papers and documents. Any member of the Board may administer such oaths and affirmations. Such investigations and inquiries shall be informal, but they shall be thorough, with the object of ascertaining the truth. Technical rules of evidence need not be observed. Any investigative hearing for such purpose may be held by a division of the Board consisting of no fewer than three members of the Board. Each division shall record its proceedings and shall report its recommendations to the full Board.

b. Following an investigative hearing, the Board shall determine:

(1) that the applicant has established his or her qualifications as to character and fitness; or

(2) that further investigation into the applicant's character and fitness is warranted; or

(3) that Specifications be filed charging the applicant with matters which if proven would preclude a favorable finding by the Board.

* * *

d. If Specifications are prepared and served upon an applicant, the applicant shall file an answer to the Specifications within 20 days from receipt of the Specifications. If an applicant fails to file an answer to the Specifications within such time or within any extension of that time allowed by the Board, the Specifications shall be deemed admitted and the Board shall enter findings of fact, finding the Specifications proven, and appropriate conclusions of law, which may include a recommendation that the applicant not be admitted to The Florida Bar.

e. After a timely answer to Specifications has been filed, the Board shall notify the applicant of the dates and locations available for the formal hearing on the Specifications and the

applicant and the Board shall agree on a date and location for the hearing. If the applicant fails to agree on one of the dates and locations proposed by the Board, the Board shall set the date and location of the hearing. If the applicant, without good cause, fails to attend the formal hearing, the Specifications shall be deemed admitted and the Board shall enter findings of fact, finding the Specifications proven, and appropriate conclusions of law, which may include a recommendation that the applicant not be admitted to The Florida Bar.

f. Formal hearings held in response to Specifications shall be conducted before a quorum of the Board which shall consist of not less than five members. The formal hearing panel shall consist of members of the Board other than those who participated in the investigative hearing. This provision may be waived with the consent of the applicant. The weight to be given all testimony and exhibits received in evidence at a formal hearing shall be considered and determined by the Board. the Board is not bound by technical rules of evidence at a formal hearing. Following the conclusion of a formal hearing, the Board shall expeditiously make

its findings of fact and conclusions of law which shall include one of the following:

(1) a recommendation that the applicant be admitted to The Florida Bar; or

(2) a recommendation that the applicant not be admitted to The Florida Bar; or

(3) after the filing of Specifications and, in lieu of a recommendation that the applicant not be admitted to The Florida Bar based upon drug, alcohol or psychological problems; the Board in exceptional cases may make a recommendation that the applicant be conditionally admitted to The Florida Bar upon such terms and conditions as specified by the Board. If the Court accepts the Board's recommendation, then the terms and conditions of the applicant's admission shall be administered by The Florida Bar as provided in Section 3.c. above; or

(4) a recommendation that the applicant's admission to The Florida Bar be withheld for a specified period of time not to exceed two years to allow the applicant to establish rehabilitation. At the end of the specified period of time, the Board shall recommend the

applicant's admission barring subsequent disclosure of matters adversely reflecting upon the applicant's character or fitness.

The applicant shall be notified promptly by the board of its findings of fact and recommendation, which action shall be subject to review by the Court as specified un Article III, Section 4.b.

DOCUMENT 18

Excerpts from the
Rules of the Supreme Court of Florida
Relating to Admissions to the Bar
Article III.B.4.a., b., e.

FLORIDA BOARD OF BAR EXAMINERS

Section 4.a. Any applicant who is dissatisfied with the Board's recommendation concerning his or her character, fitness or general qualifications, may, within sixty (60) days after notice of the Board's recommendation, file with the Board a petition for reconsideration with a fee of $100.00 as specified under the provisions of Article V, Section 11. The petition must contain new and material evidence including, without limitation to, evidence of rehabilitation, which by due diligence could not have been produced at the formal hearing. Only one such petition for reconsideration may be filed.

b. Any applicant or student registrant who is dissatisfied with the Board's recommendation concerning such applicant's or registrant's character and fitness may file an appropriate petition with the Clerk of the Supreme Court of Florida, within a period of sixty (60) days after receipt of the Board's recommendation. A copy of such petition shall be served upon the Executive Director of the Board. Unless otherwise required, the Board's response shall be filed with the Supreme Court within 25 days after service of the petition. At the time of the filing of the Board's response, the Executive Director shall place the record of the formal hearing

with the Supreme Court, and the Court shall decide whether such applicant or student registrant meets the character and fitness requirements. Final action of the Court shall be duly entered in the minutes thereof.

* * *

e. Any applicant or student registrant who, in any formal hearing held in response to Specifications pursuant to Article III, Section 3 or in any proceeding held before the Board pursuant to Article II, Section 5 or Article III, Section 4.d., affirmatively asserts rehabilitation from prior conduct which bears adversely upon such person's character and fitness for admission to the Bar shall be required to produce clear and convincing evidence of such rehabilitation including, but not limited to, the following elements:

(1) strict compliance with the specific conditions of a disciplinary, judicial, administrative or other order, where applicable;

(2) unimpeachable character and moral standing in the community;

(3) good reputation for professional ability, where applicable;

(4) lack of malice and ill feeling toward those who by duty were compelled to bring about the disciplinary, judicial, administrative or other proceeding;

(5) personal assurances, supported by corroborating evidence, of a desire and intention to conduct one's self in an exemplary fashion in the future;

(6) restitution of funds or property, where applicable;

(7) positive action showing rehabilitation by such things as a person's occupation, religion, community or civic service. Merely showing that an individual is now living as and doing those things he or she should have done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society. The requirement of positive action is appropriate for applicants for admission to the Bar because service to one's community is an implied obligation of members of the Bar.

DOCUMENT 19

Affidavits

BEFORE THE FLORIDA BOARD OF BAR EXAMINERS

IN RE: Application of **RICHARD E. LEON, SR.** for Admission to The Florida Bar

FILE NO. 61461

WITNESS AFFIDAVIT

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

Before me, the undersigned authority, personally appeared Arthur Noriega, IV who having been duly sworn deposes and says:

1. I reside in Tampa, Hillsborough County, Florida.

2. I am Director of International Relations for St. Joseph's Hospital.

3. I have known the applicant, **RICHARD E. LEON, SR.** for approximately 35 years, as a result of both professional and social activities, including his legal representation in personal and business matters, which I feel gives me the advantage of being totally candid and objective in giving testimony as to **RICHARD E. LEON, SR.**'s unequivocal dedication and ethical conduct to his clients, and love he has always shown his family and friends.

4. I am aware of the disbarment from the practice of law of **RICHARD E. LEON, SR.** and of his conviction and sentence as a result of criminal prosecution. I understand the general nature of the allegations against **Mr. LEON** concerning his application for admission to the Florida Bar.

5. **RICHARD E. LEON, SR.** has at all times accepted the legal consequences of his conviction. I truly believe that **RICHARD E. LEON, SR.** has no ill will or feelings of malice toward those who criminally prosecuted him or prosecuted disciplinary proceedings.

6. I know **RICHARD E. LEON, SR.** to be of unimpeachable character and moral standing, a person of integrity and to be a person fit to practice law in the State of Florida.

7. I know of **RICHARD E. LEON, SR.'s** reputation within the community of Tampa and Hillsborough County, Florida, to be excellent for honesty, truthfulness, ethical behavior and good character, and for competency and abilities in the practice of law. I am acutely aware that his reputation as a lawyer is excellent.

8. **RICHARD E. LEON, SR.** has assured me to my satisfaction that he intends to conduct himself in an exemplary fashion in the future.

9. I has previously, and will in the future, refer clients to **RICHARD E. LEON, SR.** for representation in legal matters should he again become a member of the Florida Bar.

10. I recommend **RICHARD E. LEON, SR.** for admission to the Florida Bar without qualification.

FURTHER AFFIDAVIT SAYETH NAUGHT.

/s/ Arthur Noriega, IV
AFFIANT

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

SWORN TO AND SUBSCRIBED before me, appeared Arthur Noriega IV on this 21 day of September, 1993.

/s/ Brenda J. Smith
NOTARY PUBLIC OF STATE OF FLORIDA
My Commission Expires: [SEAL]

BEFORE THE FLORIDA BOARD OF BAR EXAMINERS

IN RE: Application of
RICHARD E. LEON, SR. FILE NO. 61461
for Admission to
The Florida Bar

WITNESS AFFIDAVIT

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

Before me, the undersigned authority, personally appeared DELANO S. STEWART, who having been duly sworn deposes and says;

1. I reside in Tampa, Hillsborough County, Florida.

2. I am a partner in the law firm of Stewart, Joyner, Jordan-Holmes, Holmes, P.A. in business at 5020 N. Nebraska Ave., Tampa, FL 33603.

3. I have known the Applicant, **RICHARD E. LEON, SR.** for more than thirty (30) years, as a result of both professional and social activities, including his legal representation in personal and business matters, which I feel gives me the advantage of being totally candid in giving testimony as to **RICHARD E. LEON,**

SR.'s unequivocal dedication, sincerity and love which he has always shown his family and friends.

4. I am aware of the disbarment from the practice of law of **RICHARD E. LEON, SR.** and of his conviction and sentence as a result of criminal prosecution. I understand the general nature of the allegations against **MR. LEON** concerning his application for admission to the Florida Bar.

5. **RICHARD E. LEON, SR.** has at all times accepted the legal consequences of his conviction. I truly believe that **RICHARD E. LEON, SR.** has no ill will or feelings of malice toward those who criminally prosecuted him or prosecuted disciplinary proceedings.

6. I know **RICHARD E. LEON, SR.** to be of unimpeachable character and moral standing, a person of integrity and to be a person fit to practice law in the State of Florida.

7. I know of **RICHARD E. LEON, SR.'s** reputation within the community of Tampa and Hillsborough County, Florida, and know his reputation to be excellent for honesty, truthfulness, ethics and good character.

8. I know of **RICHARD E. LEON, SR.'s** reputation within the community of Tampa and Hillsborough County, Florida, for competency and abilities in the practice of law and know that his reputation as a lawyer is excellent.

9. **RICHARD E. LEON, SR.** has assured me to my satisfaction that he intends to conduct himself in an exemplary fashion in the future.

10. I has previously, and will in the future, refer clients to **RICHARD E. LEON, SR.** for representation in legal matters should he again become a member of the Florida Bar.

11. I recommend **RICHARD E. LEON, SR.** for admission to the Florida Bar without qualification.

FURTHER AFFIDAVIT SAYETH NAUGHT.

/s/ Delano S. Stewart

AFFIANT

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

SWORN TO AND SUBSCRIBED before me, appeared DELANO S. STEWART on this 28 day of September, 1993.

/s/ Michael Mobley

NOTARY PUBLIC OF STATE OF FLORIDA

My Commission Expires:

[SEAL]

BEFORE THE FLORIDA BOARD OF BAR EXAMINERS

IN RE: Application of **RICHARD E. LEON, SR.** for Admission to The Florida Bar — FILE NO. 61461

WITNESS AFFIDAVIT

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

Before me, the undersigned authority, personally appeared **Joseph Voskerichian** who having been duly sworn deposes and says:

1. I reside in Tampa, Hillsborough County, Florida.

2. I am a **Banker, Businessman and Community Leader** and in business at **NationsBank**.

3. I have known the Applicant, **RICHARD E. LEON, SR.** for approximately 35 years, as a result of both professional, community, and social activities, including his legal representation in personal matters, which I feel gives me the advantage of being totally candid in giving testimony as to **RICHARD E. LEON, SR.'s** unequivocal dedication, sincerity and love which he has always shown his family and friends.

4. I am aware of the practice of law of **RICHARD E. LEON, SR.** and of his conviction and sentence as a result of c...inal prosecution. I understand the general nature of the allegations against **MR. LEON** concerning his application for admission to the Florida Bar.

5. **RICHARD E. LEON, SR.** has at all times accepted the legal consequences of his conviction. I truly believe that **RICHARD E. LEON, SR.** has no ill will or feelings of malice toward those who criminally prosecuted him or prosecuted disciplinary proceedings.

6. I know **RICHARD E. LEON, SR.** to be of unimpeachable character and moral standing, a person of integrity and to be a person fit to practice law in the State of Florida.

7. I know of **RICHARD E. LEON, SR.'s** reputation within the community of Tampa and Hillsborough County, Florida, and know his reputation to be excellent for honesty, truthfulness, ethics and good character.

8. I know of **RICHARD E. LEON, SR.'s** reputation in the community of Tampa and Hillsborough County, Florida, for

competency and abilities in the practice of law and know that his reputation as a lawyer is excellent.

9. **RICHARD E. LEON, SR.** has assured me to my satisfaction that he intends to conduct himself in an exemplary fashion in the future.

10. I has previously, and will in the future, refer clients to **RICHARD E. LEON, SR.** for representation in legal matters should he again become a member of the Florida bar.

11. I recommend **RICHARD E. LEON, SR.** for admission to the Florida Bar without qualification.

FURTHER AFFIDAVIT SAYETH NAUGHT.

/s/ Joseph Voskerichian
AFFIANT

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

SWORN TO AND SUBSCRIBED before me, appeared Joseph Voskerichian on this 1st day of ~~October~~ November, 1993.

/s/ Susan J. Brown
NOTARY PUBLIC OF STATE OF FLORIDA

My Commission Expires:

[SEAL]

BEFORE THE FLORIDA BOARD OF BAR EXAMINERS

IN RE: Application of
RICHARD E. LEON, SR.
for Admission to
The Florida Bar

FILE NO. 61461

WITNESS AFFIDAVIT

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

BEFORE ME, the undersigned authority, personally appeared CHARLES H. SCRUGGS, III, ESQUIRE, who having been duly sworn, deposes and says:

1. I have resided in Tampa, Hillsborough County, Florida continuously since 1946.

2. I am a an Attorney At Law and do business at 1105 Swann Avenue, Tampa, Florida 33606.

3. I have known the Applicant, RICHARD E. LEON, SR. for approximately 33 years (since we were law students at Stetson University College of Law) as a result of both professional and social activities, including our sitting as fellow Judges in the Thirteenth Judicial Circuit, I feel experience gives me the advantage of being totally candid in giving testimony as to RICHARD

E. LEON, SR.'s dedication to the legal profession, his sincerity and affection and esteem which he has always shown his family and friends.

4. Be advised that I am aware of his disbarment from the practice of law and of his conviction and sentence of criminal prosecution. I understand the general nature of the allegations against RICHARD E. LEON, SR. concerning his application for admission to the Florida Bar.

5. To my knowledge, RICHARD E. LEON, SR. has always accepted the legal consequences of his conviction. I sincerely believe that he has no ill feelings nor malice toward those who criminally prosecuted him or prosecuted disciplinary proceedings.

6. I know RICHARD E. LEON, SR. to be a kind, gentle man, who in my opinion enjoys an unimpeachable character. To me he is a person of integrity and certainly is morally fit to practice law in the State of Florida.

7. I also know of RICHARD E. LEON, SR.'s reputation within the community of Tampa and Hillsborough County, Florida, to be excellent for honesty and good character.

8. Likewise, I know of RICHARD E. LEON, SR.'s in this community for competency and abilities in the practice of law; his reputation as a lawyer is very good.

9. **RICHARD E. LEON, SR.** has assured me to my satisfaction that he intends to conduct himself in an exemplary fashion in the future.

10. I have in the past and intend in the future, refer clients to RICHARD E. LEON, SR. for representation in legal matters, should he again become a member of the Florida Bar.

11. I recommend RICHARD E. LEON, SR. for admission to the Florida Bar without qualification.

FURTHER AFFIDAVIT SAYETH NAUGHT.

/s/ Charles H. Scruggs, III
CHARLES H. SCRUGGS, III

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

SWORN TO AND SUBSCRIBED before me this 27th day of September, 1993.

/s/ Cheryl E. Lonegran
NOTARY PUBLIC-STATE OF FLORIDA

[SEAL]

MY COMMISSION EXPIRES:

BEFORE THE FLORIDA BOARD OF BAR EXAMINERS

IN RE: Application of
RICHARD E. LEON, SR. FILE NO. 61461
for Admission to
The Florida Bar

WITNESS AFFIDAVIT

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

Before me, the undersigned authority, personally appeared **RONALD K. CACCIATORE,** who having been duly sworn, deposes and says:

1. The Affiant resides at 2308 Sought Hesperides, Tampa, Hillsborough County, Florida.

2. The Affiant is an attorney presently engaged in the practice of law at Suite 2835, 100 North Tampa Street, Tampa, Florida 33602.

3. The Affiant was admitted to the Bar and began practicing law on November 15, 1963.

4. The Affiant has known **RICHARD E. LEON, SR.** for approximately 20 years and the Affiant's knowledge of the Applicant is both social and professional.

5. The Affiant is aware of the matters which gave rise to the Applicant's conviction and sentence and the Applicant's subsequent disbarrment [sic] from the practice of law.

6. The Affiant truly believes that the Applicant has at all times accepted the legal consequences of his conviction and sentence and subsequent disbarrment [sic]; and the Affiant does not believe that the Applicant has any ill will or bad feelings towards those who prosecuted him in court, or brought about this disbarrment [sic].

7. The Affiant believes that the Applicant is of good moral character, and is a person fit to practice law in the state of Florida.

8. The Affiant believes that in spite of his prior criminal problem, the Applicant has a good reputation in Hillsborough County for honesty, integrity, and for being truthful.

9. The Applicant had an excellent reputation during the time he was practicing law.

9. The Affiant believes that the Applicant intends to conduct himself properly in the future, and adhere to the rules regulating The Florida Bar should the Applicant gain admittance to

practice law again, and that reason, the Affiant recommends **RICHARD E. LEON, SR.** for admission to The Florida Bar.

FURTHER AFFIDAVIT SAYETH NAUGHT.

/s/ Ronald K. Cacciatore
AFFIANT

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

SWORN TO AND SUBSCRIBED before me, appeared **RONALD K. CACCIATORE** on this 2nd day of March, 1994.

/s/
NOTARY PUBLIC OF STATE OF FLORIDA
My Commission Expires:

Personally Known to Me X [Seal]
Produced D/L as Identification ___

BEFORE THE FLORIDA BOARD OF BAR EXAMINERS

IN RE: Application of
RICHARD E. LEON, SR.
for Admission to
The Florida Bar

FILE NO. 61461

WITNESS AFFIDAVIT

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

BEFORE ME, the undersigned authority, personally appeared Laurence I. Goodrich, who having been duly sworn deposes and says:

1. I reside in Tampa, Hillsborough County, Florida.

2. I am an attorney at law engaged in private practice with offices located at 100 Ashley Drive South, Suite 1745, Tampa, Florida 33602.

3. I have known the Applicant, **RICHARD E. LEON, SR.** for approximately thirty-five (35) years, as a result of both professional and social activities, including his legal representation of himself and others in personal and business matters. I feel I know and have observed him well enough to express a meaningful opinion as to **RICHARD E. LEON, SR.'s** unequivocal dedication,

sincerity and love which he has always demonstrated for and towards his family and friends.

4. I am aware of the disbarment from the practice of law of **RICHARD E. LEON, SR.** and of his conviction and sentence as a result of criminal prosecution. I understand the general nature of the allegations against **MR. LEON** concerning his application for admission to the Florida Bar.

5. I believe that **RICHARD E. LEON, SR.** has at all times accepted the legal consequences of his conviction. I also truly believe that **RICHARD E. LEON, SR.** has no ill will or feelings of malice toward those who criminally prosecuted him or prosecuted disciplinary proceedings involving him.

6. I believe **RICHARD E. LEON, SR.** to be of very good moral character and standing. He is a person of integrity who has overcome adversity; paid his debt to society; and should be welcomed back to society with full rights and privileges.

7. I believe **RICHARD E. LEON, SR.** to be a person who is fully rehabilitated and who is fit to practice law in the State of Florida.

8. I know of **RICHARD E. LEON, SR.**'s reputation within the community of Tampa and Hillsborough County, Florida; and know his reputation to be excellent for honesty, truthfulness, ethics and good character.

9. I know of **RICHARD E. LEON, SR.**'s reputation in the community of Tampa and Hillsborough County, Florida, for competency and abilities in the practice of law and know that his reputation as a lawyer is excellent.

10. **RICHARD E. LEON, SR.** has assured me to my satisfaction that he intends to conduct himself in an exemplary fashion in the future. I have absolutely no doubt in my own mind that he will actually do so.

11. I have previously, and will in the future, refer clients to **RICHARD E. LEON, SR.** for representation in legal matters should he again become a member of the Florida Bar.

12. I strongly recommend **RICHARD E. LEON, SR.** for admission to the Florida Bar without qualification.

FURTHER AFFIDAVIT SAYETH NAUGHT.

/s/ Laurence I. Goodrich
Laurence I. Goodrich, Affiant

I HEREBY CERTIFY THAT the foregoing affidavit was acknowledged before me this 12th day of October, 1993, by LAURENCE I. GOODRICH, who is personally known to me, and who did take an oath.

/s/ James D. Palermo
James D. Palermo
Notary Public, State of Florida

[SEAL]

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LA GACETA
The weekly with the political impact

RE: RICHARD E. LEON, SR.

TO WHOM IT MAY CONCERN:

My name is Roland Manteiga. I am a resident of Tampa, Florida, and the editor and publisher of La Gaceta, a tri-lingual weekly newspaper that has published consecutively since 1922.

I have known Richard Leon for more than 20 years, both professionally and socially. We are longtime friends.

I am aware of Mr. Leon's disbarment from the practice of law and of his conviction and sentence as a result of criminal prosecution. I understand the general nature of the allegations against Mr. Leon concerning his application for admission to The Florida Bar.

He has at all times accepted the legal consequences of his conviction. After talking with him on a number of occasions I know he has no ill will or bad feelings towards those who criminally prosecuted him or prosecuted disciplinary proceedings.

I know Richard Leon to be of unimpeachable moral standing. He is bright, candid with his friends and others, possesses a

wonderful sense of humor and is an intelligent, gentle and compassionate citizen.

I know Mr. Leon's reputation within Tampa and Hillsborough County and know his reputation as a lawyer is excellent. He, indeed, is a person fit to practice law in the State of Florida.

He has assured me that he intends to conduct himself in an exemplary fashion in the future and I will, as I have previously, refer my friends to Mr. Leon for representation in legal matters should he again become a member of the florida Bar.

I strongly recommend Richard Leon for admission to the Florida Bar.

/s/ Roland Manteiga /s/ Louise C. Schmechel
Roland Manteiga [SEAL] 11/10/93

Published every Friday, in three languages - Spanish, English and Italian

3210 E. 7th Avenue Tampa, Florida 33605
P.O. Box 5536 Tampa, Florida 33675

BEFORE THE FLORIDA BOARD OF BAR EXAMINERS

IN RE: Application of **RICHARD E. LEON, SR.** for Admission to The Florida Bar — FILE NO. 61461

WITNESS AFFIDAVIT

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

Before me, the undersigned authority, personally appeared Julianne M. Holt who having been duly sworn deposes and says:

1. I reside in Tampa, Hillsborough County, Florida.

2. I am an attorney and in business at Hillsborough County Public Defender's Office.

3. I have known the Applicant, **RICHARD E. LEON, SR.** for approximately 20 years, as a result of both professional and social activities, including his legal abilities, which I feel gives me the advantage of being totally candid in giving testimony as to **RICHARD E. LEON, SR.'s** unequivocal dedication, sincerity and love which he has always shown his family and friends.

4. I am aware of the disbarment from the practice of law of **RICHARD E. LEON, SR.** and of his conviction and sentence

as a result of criminal prosecution. I understand the general nature of the allegations against Mr. Leon concerning his application for admission to the Florida Bar.

5. **RICHARD E. LEON, SR.** has at all times accepted the legal consequences of his conviction. I truly believe that RICHARD E. criminally prosecuted him or prosecuted disciplinary proceedings.

6. I know **RICHARD E. LEON, SR.** to be of unimpeachable character and moral standing, a person of integrity and to be a person fit to practice law in the State of Florida.

7. I know of **RICHARD E. LEON, SR.**'s reputation within the community of Tampa and Hillsborough County, Florida, and know his reputation to be excellent for honesty, truthfulness, ethics and good character.

8. I know of **RICHARD E. LEON, SR.**'s reputation in the community of and Hillsborough County, Florida, for competency and abilities in the practice of law and know that his reputation as a lawyer is excellent.

9. **RICHARD E. LEON, SR.** has assured me to my satisfaction that he intends to conduct himself in an exemplary fashion in the future.

10. I feel confident that I could refer clients to **RICHARD E. LEON, SR.** for representation in legal matters should he again become a member of the Florida Bar and that he would be a very competent advocate for his clients.

11. I recommend **RICHARD E. LEON, SR.** for admission to the Florida Bar without qualification.

FURTHER AFFIDAVIT SAYETH NAUGHT.

/s/ Julianne M. Holt
AFFIANT

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

SWORN TO AND SUBSCRIBED before me, appeared Julianne M. Holt on this 20th day of October, 1993.

/s/ Sharon H. Slater
NOTARY PUBLIC OF STATE OF FLORIDA
My Commission Expires:

[SEAL]

BEFORE THE FLORIDA BOARD OF BAR EXAMINERS

IN RE: APPLICATION OF:
RICHARD E. LEON, SR.

FILE NO. 61461

for Admission to
The Florida Bar

WITNESS AFFIDAVIT

STATE OF FLORIDA:
COUNTY OF HILLSBOROUGH:

BEFORE ME, the undersigned authority, personally appeared RALPH M. GUITO, JR., ESQUIRE, who, having been duly sworn, deposes and says:

1. I am a resident of Tampa, Hillsborough County, Florida, and engaged in the practice of law with the firm of Guito & Gabbard, Sun bank Building,, 315 East Madison Street, Suite 1004, Tampa, Florida 33602.

2. I am an Attorney at Law in good standing with The Florida Bar, having been admitted to practice in the State of Florida in 1968. I have continually practiced law in the State of Florida since then.

3. I have known Richard E. Leon, Sr., since prior to 1956 when, after my discharge from the United States Air Force, I

renewed my acquaintance with Richard E. Leon, Sr., as we were both undergraduate students at the University of Tampa, in Tampa, Florida. We continued our friendship throughout our undergraduate studies at the University of Tampa.

4. Richard E. Leon, Sr. and I also attended law school together. We both graduated from Cumberland School of Law in Birmingham, Alabama.

5. In my knowledge of and long-term acquaintance with Mr. Leon, both at the student level and subsequently at the professional level, in professional activities and in business matters, and in all of my dealings with him, I feel that this is a true opportunity and a privilege and honor to be able to make these statements regarding Mr. Leon:

a) In my professional association with Mr. Leon, I have always found him to be unequivocally dedicated to his practice of law and meticulous and concerned in his representation of his clients. In my long-term acquaintance with Mr. Leon, I have never known him to be dishonest or untrustworthy. I have always found him to be helpful, ethical, and compassionate to people who needed his help. I respect him as a man of his word. I have never known

him to indulge to excess in the use of alcoholic beverages or use drugs.

b) I further state that I have known Mr. and Mrs. Leon since before they were married. I have known both of them very well and also their children. I have observed Mr. and Mrs. Leon to be fine and caring parents, demonstrating their love, care and concern for their family. Mr. and Mrs. Leon adopt other children and raise them along with their children, treating them as their own children were treated.

6. I am fully aware of the circumstances surrounding the disbarment, conviction and sentencing of Mr. Leon as a result of the criminal investigation. I understand the general nature of the allegations against Mr. Leon concerning his application for admission to The Florida Bar. I can unequivocally state that I believe he has at all times accepted the legal consequences of the investigation, conviction sentencing, and disbarment, and that he bears no ill will or feelings of malice toward those responsible for his prosecution. I believe he understands that we all have jobs to do.

7. In my opinion, I find Mr. Leon to be of unimpeachable character and of the highest moral and ethical standards. he is a person of integrity and responsibility and is a person who is fit to practice law in the State of Florida. I am aware of his outstanding reputation for honesty, impeccable character and professional and ethical practices in the Tampa area. I have the highest respect for his competency and abilities in the practice of law.

8. I have visited with Mr. Leon on numerous occasions and have had many discussions with him during which he has assured me to my complete satisfactions that he intends to conduct himself in an exemplary manner according to the accepted standards of The Florida Bar.

9. I have previously referred clients to Mr. Leon for legal representation and would not have the slightest hesitation to refer clients to him in the future. In addition, I may co-counsel with Mr. Leon should he again become a member of The Florida Bar and the opportunity arises.

10. I sincerely and unequivocally recommend that Richard E. Leon, Sr. for admission to The Florida Bar.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ Ralph M. Guito, Jr., Esquire
Ralph M. Guito, Jr., Esquire

The aforegoing instrument was sworn to, subscribed and acknowledged before me this 11 day of October, 1993, by RALPH M. GUITO, JR., ESQUIRE, who is personally known to me or who has produced none needed as type of identification, and who did take an oath.

(SEAL)

/s/ Karen E. Guito
Signature of person taking acknowledgement

Karen E. Guito
Name of officer taking acknowledgement -- typed, printed or stamped

[SEAL]

Title or rank and Serial No., if any.

yr - 92793

BEFORE THE FLORIDA BOARD OF BAR EXAMINERS

IN RE: Application of RICHARD E. LEON, SR. for Admission to The Florida Bar — FILE NO. 61461

WITNESS AFFIDAVIT

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

Before me, the undersigned authority, personally appeared Thomas F. Granahan, who having been duly sworn deposes and says:

1. I reside in Tampa, Hillsborough County, Florida.

2. I am an attorney practicing in Hillsborough County. My business address is 1906 N. Tampa Street, Tampa, Florida, 33602.

3. I have known the Applicant, **RICHARD E. LEON, SR.** for approximately 31 years, as a result of both professional and social activities, including his legal representation in personal and business matters which I feel gives me the advantage of being totally candid in giving testimony as to **RICHARD E. LEON, SR.'s** unequivocal dedication, sincerity and love which he has always shown for and towards his family and friends.

4. I am aware of the disbarment from the practice of law of **RICHARD E. LEON, SR.** and of his conviction and sentence as a result of criminal prosecution. I understand the general nature of the allegations against Mr. Leon concerning his application for admission to the Florida Bar.

5. **RICHARD E. LEON, SR.** has at all times accepted the legal consequences of his conviction. I truly believe that **RICHARD E. LEON, SR.** has no ill will or feelings of malice toward those who criminally prosecuted him or prosecuted disciplinary proceedings.

6. **RICHARD E. LEON, SR.** has always demonstrated excellent character and moral standing and is a person of integrity and, in my opinion, will be an asset to the Florida Bar if allowed to once again practice law.

7. My knowledge of **RICHARD E. LEON, SR.'s** reputation within the community of Tampa and Hillsborough County, Florida is that of excellance [sic] for his honesty, truthfulness, ethics and good character.

8. I know his reputation in the community as being a competent and honest individual who is capable of practicing law in a competent manner.

9. **RICHARD E. LEON, SR.** has assured me to my satisfaction that he intends to conduct himself in an exemplary fashion in the future.

10. I have previously, and will in the future, refer clients to **RICHARD E. LEON, SR.** for representation in legal matters should he again become a member of the Florida Bar.

11. I recommend **RICHARD E. LEON, SR.** for admission to the Florida Bar without qualification.

FURTHER AFFIDAVIT SAYETH NAUGHT.

/s/ Thomas F. Granahan
Affiant

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

SWORN TO AND SUBSCRIBED before me, appeared Thomas F. Granahan on this 28th day of September, 1993.

[SEAL]

/s/ Janice J. Stinson
NOTARY PUBLIC OF THE STATE OF FLORIDA
My Commission Expires:
Janice J. Stinson

BEFORE THE FLORIDA BOARD OF BAR EXAMINERS

IN RE: Application of **RICHARD E. LEON, SR.** for Admission to The Florida Bar — FILE NO. 61461

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

Before me, the undersigned authority, personally appeared **LARRY E. SOLOMON** who having been duly sworn deposes and says:

1. I reside in Tampa, Hillsborough County, Florida.

2. I am an attorney practicing law in Tampa, Hillsborough County at 1505 N. Florida Avenue, Tampa, Florida 33602. I have been licensed to practice law in the State of Florida since December, 1973.

3. I have known the Applicant, **RICHARD E. LEON, SR.** for approximately 20 years as a result of both professional and social activities, which enables me to give testimony as to **RICHARD E. LEON, SR.'s** unequivocal dedication, sincerity and love which he has always shown his family and friends.

4. I am aware of **RICHARD E. LEON's** disbarment from the practice of law of **RICHARD E. LEON, SR.** and his conviction and sentence as a result of criminal prosecution. I understand the general nature of the allegations against **RICHARD E. LEON, SR.** concerning his application for admission to the Florida Bar.

5. At all times, **RICHARD E. LEON, SR.** has accepted the legal consequences of his conviction. I believe that **RICHARD E. LEON, SR.** has no ill will or feelings of malice toward those who criminally prosecuted him or prosecuted disciplinary proceedings.

6. I know **RICHARD E. LEON, SR.** to be of unimpeachable character and moral standing and a person of integrity. In my opinion, he is fit to practice law in the State of Florida.

7. I know of **RICHARD E. LEON, SR.'s** reputation within the community of Tampa and Hillsborough County, Florida to be excellent for honesty, ethics and good character.

8. I know of **RICHARD E. LEON, SR.'s** reputation in the community of Tampa and Hillsborough County, Florida, for competency and abilities in the practice of law and know that his reputation as a lawyer is excellent.

9. **RICHARD E. LEON, SR.** has assured me to my satisfaction that he intends to conduct himself in an exemplary fashion in the future.

10. In the future, refer clients to **RICHARD E. LEON, SR.** for representation in legal matters should he again become a member of the Florida Bar.

11. I recommend **RICHARD E. LEON, SR.** for admission to the Florida Bar without qualification.

FURTHER AFFIDAVIT SAYETH NAUGHT.

/s/ Larry E. Solomon
AFFIANT

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

SWORN TO AND SUBSCRIBED before me, appeared Larry E. Solomon on this 9th day of December, 1993.

/s/ Sylvia A. Buston
NOTARY PUBLIC OF STATE OF FLORIDA
My Commission Expires:

[SEAL]

REL.Aff

BEFORE THE FLORIDA BOARD OF BAR EXAMINERS

IN RE: Application of **RICHARD E. LEON, SR.** for Admission to The Florida Bar — FILE NO. 61461

WITNESS AFFIDAVIT

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

Before me, the undersigned authority, personally appeared **Peter N. Busto** who having been duly sworn deposes and says:

1. I reside in Tampa, Hillsborough County, Florida.

2. I am a **plumbing contractor** and in business at **1702 St. Louis St., Tampa, Florida 33607**.

3. I have known the Applicant, **RICHARD E. LEON, SR.** for approximately 45 years, as a result of both professional and social activities, including his legal representation in personal and business matters, which I feel gives me the advantage of being totally candid in giving testimony as to **RICHARD E. LEON, SR.'S** unequivocal dedication, sincerity and love which he has always shown his family and friends.

4. I am aware of the disbarment from the practice of law of **RICHARD E. LEON, SR.** and of his conviction and sentence as a result of criminal prosecution. I understand the general nature of the allegations against **Mr. LEON** concerning his application for admission to the Florida Bar.

5. **RICHARD E. LEON, SR.** has at all times accepted the legal consequences of his conviction. I truly believe that **RICHARD E. LEON, SR.** has no ill will or feelings of malice toward those who criminally prosecuted him or prosecuted disciplinary proceedings.

6. I know **RICHARD E. LEON, SR.** to be of unimpeachable character and moral standing, a person of integrity and to be person fit to practice law in the State of Florida.

7. I know of **RICHARD E. LEON, SR.'s** reputation within the community of Tampa and Hillsborough County, Florida, and know his reputation to be excellent for honesty, truthfulness, ethics and good character.

8. I know of **RICHARD E. LEON, SR.'s** reputation in the community of Tampa and Hillsborough County, Florida, for

competency and abilities in the practice of law and know that his reputation as a lawyer is excellent.

9. **RICHARD E. LEON, SR.** has assured me to my satisfaction that he intends to conduct himself in an exemplary fashion in the future.

10. I has previously, and will in the future, refer clients to **RICHARD E. LEON, SR.** for representation in legal matters should he again become a member of the Florida bar.

11. I recommend **RICHARD E. LEON, SR.** for admission to the Florida BAr [sic] without qualification.

FURTHER AFFIDAVIT SAYETH NAUGHT.

/s/ Peter N. Busto
AFFIANT

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

SWORN TO AND SUBSCRIBED before me, appeared Peter N. Busto on this 24th day of September, 1993.

/s/ Sue A. Rennick
Sue A. Rennick
NOTARY PUBLIC OF STATE OF FLORIDA
My Commission Expires:

BEFORE THE FLORIDA BOARD OF BAR EXAMINERS

IN RE: Application of
RICHARD E. LEON, SR. FILE NO. 61461
for Admission to
The Florida Bar

WITNESS AFFIDAVIT

STATE OF FLORIDA
COUNTY OF PASCO

Before me, the undersigned authority, personally appeared **SUSAN A. BOHM** who having been duly sworn deposes and says:

1. I reside at 7311 Milford Court, Hudson, Pasco County, Florida, 34667.

2. I am a Paralegal and am currently employed at the Law Offices of Demetrios Economou, P.A. 8152 Washington Street, Port Richey, Pasco County, Florida, 34668.

3. I have known the Applicant, RICHARD E. LEON, SR. for approximately seven (7) years. MR. LEON and I were co-workers while we were both under the employment of the Law Office of Beil & Hay, P.A., Hudson, Pasco County, Florida, and having worked with him in a professional capacity and having known him through social activities, I am able to be totally candid

in giving any testimony as to MR. LEON's dedication and respect to the field of law and to his personal characteristics as a person.

4. I personally know of RICHARD E. LEON, SR.'s legal educational background and personal experiences of the legal profession and his capabilities of providing adequate and competent legal representation in any and all personal and business matters.

5. I have personal knowledge of MR. LEON's genuine compassion, sincerity and love of his family and friends and his undeniable concern, respect and support of co-workers, clients and acquaintances.

6. I am fully aware of the disbarment from the practice of law of RICHARD E. LEON, SR. and of his conviction and sentence as a result of criminal prosecution thereof. I have been further advised and have a general understanding as to the nature of the allegations against RICHARD E. LEON, SR. with concern of his application for admission to The Florida Bar.

7. RICHARD E. LEON, SR. has at all times accepted the legal consequences of his conviction. I firmly believe that RICHARD E. LEON, SR. has no ill will or feelings of malice toward

those who criminally prosecuted him or to those who initiated and further prosecuted disciplinary proceedings.

8. I know RICHARD E. LEON, SR. to be of unimpeachable character and moral standing, a person of integrity and further, a person fit to practice law in the State of Florida.

9. I know of RICHARD E. LEON, SR.'s reputation within the community of Hudson and Pasco County, Florida, and know his reputation as being nothing short of excellent as to his honesty, truthfulness, professional attitude and fine judgment.

10. I know of RICHARD E. LEON, SR.'s reputation in the communities of Hudson and Tampa and the counties of Pasco and Hillsborough, for his competency and professional abilities in the practice of law and know that his reputation in the legal field is one of total respect.

11. RICHARD E. LEON, SR. has shown me to my complete satisfaction to always conduct himself in an exemplary fashion and I believe that he will continue to do so in the future.

12. I has previously, and will continue, should the need arise, refer clientele to RICHARD E. LEON, SR. for representation

in legal matters should he again become a member of The Florida Bar.

13. I recommend RICHARD E. LEON, SR. for admission to the Florida Bar without qualification.

FURTHER AFFIDAVIT SAYETH NAUGHT.

/s/ Susan A. Bohm
SUSAN A. BOHM, Affiant

STATE OF FLORIDA
COUNTY OF PASCO

I, HEREBY CERTIFY, that on this day, before me, an officer duly, authorized in the State aforesaid and in the County aforesaid to take acknowledgements, personally appeared SUSAN A. BOHM, to me known to be the person described in or who produced ____ ____ as identification and who executed the foregoing instrument and who acknowledged before me that he executed the same.

Witness my hand and official seal in the County an State last aforesaid this 14 day of October, 1993.

/s/ Thomas J. Karac
NOTARY PUBLIC
THOMAS J. KARAC
Printed Name of Notary
My Commission Expires: 9-30-95
My Commission Number is: C145198
[SEAL]

JAMES C. ADKINS
CHIEF JUSTICE (RETIRED)
SUPREME COURT OF FLORIDA

November 18, 1993

Florida Board of Bar Examiners
1300 East Park Avenue
Tallahassee, Florida 32399

Re: Richard E. Leon

Dear Gentlemen:

During the past twenty years I have had the opportunity to observe Richard E. Leon and considered him a good friend. His disbarment and conviction shocked me.

During all his problems I never heard him express any animosity toward any one because of this. He accepted the legal consequences of the conviction and disbarment. In fact he continues to express admiration for the Florida Bar and the Judiciary.

He now enjoys an excellent reputation in Hillsborough County. I think he is a man of high integrity who has profited from his misfortunes. In my opinion he is honest and competent, a fit person to be a member of The Florida Bar.

Please consider this as the highest recommendation.

Sincerely,

/s/ James C. Adkins
James C. Adkins

Sworn to and subscribed before me this 18th day of November, 1993.

/s/Hester H. Pennington [SEAL]
NOTARY PUBLIC of the State of Florida
My Commission Expires: Jan. 14, 1995

Hester H. Pennington COMM. #CC077380
JCA/hhp

930 BLACKWOOD AVENUE, TALLAHASSEE, FLORIDA 32303

DOCUMENT 20

Petitioner's Response to Specifications

BEFORE THE FLORIDA BOARD OF BAR EXAMINERS

IN RE: Application of **RICHARD E. LEON, SR.** for Admission to The Florida Bar — FILE NO. 61461

RESPONSE TO SPECIFICATIONS

Specification 1:

Admitted.

No defense offered. Criminal charges were pending at the time.

Specification 2:

Admitted.

All conditions of sentence completed. Civil Rights restored.

Full pardon granted by Governor and Cabinet.

Specification 3:

Admitted in part; Denied in part.

Prior to disciplinary proceedings before the Referee, **Applicant** and the Florida Bar stipulated to a factual basis of consideration only as to felony convictions, not removal from

office. There was no defense offered or specification charging removal from judicial office. See Referee Report.

Specification 4:

(A) Denied.

Applicant denies **Specification 4(A)** - that he continues with a pattern of dishonesty.

Applicant has already been tried on two Courts [sic] of Perjury. The statements made to the Board during the application process and during the investigative hearing are consistent with the statements made during the investigatory process prior to trial and consistent with the statements made during the trial.

It is difficult to understand how the statements made to the Board are false when they are consistent with the statements previously made.

It is also difficult to understand how the statements are lacking in candor for the same reasons.

Applicant appeared before the Board as a convicted felon and objects to this Board now retrying his perjury cases.

Wherefore, **Applicant** moves that **Specification 4 (A)** be dismissed.

Further, Applicant submitted to a polygraph examination at the direction of the trial judge; said polygraph did not demonstrate any deceit.

(B) Denied.

It is difficult to frame a responsive answer to a charge that **Applicant's** statement, "that he did not commit perjury" was false, misleading or lacking in candor because **Applicant** admitted that he was convicted of perjury.

The allegation that the statement was misleading is due to the misunderstanding of the non-attorney board member, who did not understand the difference between a statement made under oath and one not made under oath.

Further, **Applicant** submitted to a polygraph examination at the direction of the trial judge; said polygraph did not demonstrate any deceit.

Wherefore, **Applicant** moves for a dismissal of **Specification 4(B)**.

(c) Denied.

It is difficult to frame a response to **Specification 4(C)** without a transcript of the proceedings upon which this Specification is based; and considering that there was a lapse of approximately ten(10) years between the act of recantation and the posing of the question to the **Applicant**.

(D) Denied.

To properly respond to **Specification 4(D)**, it is requested that **Applicant** be furnished with a copy of the statement or the notes of the investigator from the Florida Parole Commission.

RICHARD E. LEON, SR.
Applicant

DOCUMENT 21

Excerpts from Transcript

Testimony of Richard E. Leon
pp. 204, 207

* * *

Q. Do you have with you any documentation of community service that you have done that was voluntary since you have been removed, disbarred?

A. I think I was disbarred in 1987. I went to medical school for three years. Bringing us to 1990. I worked in Hudson, Florida, for about a year. Came to Tampa. I had a serious automobile accident. I had back surgery. I had a disc removed. It's kind of hard to survive and do community service when you're hospitalized and disabled. And I think I've done well just to do the things that I've done, without seeking public aid or help.

* * *

Q. Mr. Leon, let's assume for the sake of the question that to the rest of the world, let's take away your friends and people who knew you personally, to the rest of the world as a convicted perjurer from 1982 up until you received a pardon, what have you done affirmatively to represent rehabilitation other than going to medical school and working, as every human being in our society is expected to do?

A. Are there any doctors on the Board? Going to medical school is not something you just say, hey, I'm going to medical school.

Q. Who did that help besides Richard Leon?

A. All the poor people that were in the Dominican Republic that I helped for four years working for free while I was in school.